

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -  
JASCHA CHIAVERINI, ET AL., )

Petitioners, )

v. ) No. 23-50

CITY OF NAPOLEON, OHIO, ET AL., )

Respondents. )  
- - - - -

Pages: 1 through 70

Place: Washington, D.C.

Date: April 15, 2024

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

[www.hrccourtreporters.com](http://www.hrccourtreporters.com)

1                   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - -

3   JASCHA CHIAVERINI, ET AL.,                   )

4                               Petitioners,                   )

5                               v.                               ) No. 23-50

6   CITY OF NAPOLEON, OHIO, ET AL.,                   )

7                               Respondents.                   )

8   - - - - -

9

10                               Washington, D.C.

11                               Monday, April 15, 2024

12

13                   The above-entitled matter came on for  
14   oral argument before the Supreme Court of the  
15   United States at 11:45 a.m.

16

17   APPEARANCES:

18   EASHA ANAND, ESQUIRE, Stanford, California; on behalf  
19       of the Petitioners.

20   VIVEK SURI, Assistant to the Solicitor General,  
21       Department of Justice, Washington, D.C.; for the  
22       United States, as amicus curiae, supporting  
23       vacatur.

24   MEGAN M. WOLD, ESQUIRE, Washington, D.C.; on behalf of  
25       the Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	EASHA ANAND, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	VIVEK SURI, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting vacatur	38
9	ORAL ARGUMENT OF:	
10	MEGAN M. WOLD, ESQ.	
11	On behalf of the Respondents	46
12	REBUTTAL ARGUMENT OF:	
13	EASHA ANAND, ESQ.	
14	On behalf of the Petitioners	68
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:45 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument next in Case 23-50, Chiaverini versus  
5 the City of Napoleon.

6 Ms. Anand.

7 ORAL ARGUMENT OF EASHA ANAND

8 ON BEHALF OF THE PETITIONERS

9 MS. ANAND: Mr. Chief Justice, and may  
10 it please the Court:

11 Everyone in this case now agrees that  
12 as the lack of probable cause element of a  
13 malicious prosecution claim under the Fourth  
14 Amendment, the charge-specific rule governs.  
15 That is, a plaintiff may make out a malicious  
16 prosecution claim by proving that one charge is  
17 not supported by probable cause, even if other  
18 charges are, provided, of course, that the  
19 plaintiff also makes out the other elements of  
20 the claim.

21 As no one appears to dispute, that  
22 charge-specific rule is supported, as Chief  
23 Judge Pryor put the point, by both centuries of  
24 common law and by bedrock Fourth Amendment  
25 principles. That's all this Court needs to

1 address to resolve this case.

2 Respondents urge this Court to go  
3 beyond that ruling to weigh in on a series of  
4 open questions about a different element of the  
5 Fourth Amendment malicious prosecution claim,  
6 the resulted in a seizure element.

7 No one disputes Mr. Chiaverini is  
8 going to have to prove that on remand. But  
9 weighing in on the kind of precise contours of  
10 that question would require this Court to go  
11 beyond the question presented to address issues  
12 not aired at all below, that haven't percolated  
13 in the courts of appeal, and to do so on the  
14 sort of briefing that doesn't have the kinds of  
15 text, history, common law arguments that you'd  
16 expect before weighing in on an element of a  
17 constitutional tort.

18 As in Thompson, this case involves a  
19 narrow dispute over one element of a Fourth  
20 Amendment malicious prosecution claim. This  
21 Court should simply hold that a plaintiff can  
22 make out a claim by showing that at least one  
23 charge lacks probable cause, again, assuming  
24 they can make out the other elements of the  
25 claim, and remand for consideration of

1 everything else.

2 I welcome this Court's questions.

3 CHIEF JUSTICE ROBERTS: Well, what do  
4 you have to show, if anything, about causation?  
5 If you have a situation where you've got three  
6 crimes -- three allegations and two are  
7 concededly valid and they justify the seizure,  
8 you still get relief? Don't you have to show  
9 some kind of causation?

10 MS. ANAND: Yes, Your Honor. So we  
11 agree there has to be some kind of causation.  
12 We think the formulation in Thompson is correct.  
13 You have to show that the malicious prosecution  
14 resulted in a seizure.

15 Our position is that if you want to  
16 weigh in on precisely what the counterfactual  
17 is, the Eleventh Circuit's position is correct,  
18 that the correct counterfactual is, could this  
19 have been done as a warrantless arrest? The  
20 Eleventh Circuit said --

21 CHIEF JUSTICE ROBERTS: What's "it"?

22 MS. ANAND: Could the plaintiff have  
23 been seized for this length of time or seized  
24 with this length of time based on a warrantless  
25 arrest. So the way Thom -- the way the Eleventh

1 Circuit articulates it is, look, this legal  
2 process was corrupted, we know this legal  
3 process was necessary if the detention is longer  
4 than 48 hours, right, that's a Fourth Amendment  
5 requirement, you've got to have legal process  
6 for a detention that's longer than 48 hours, and  
7 so, because this legal process was necessary,  
8 what you have to show is -- you prevail unless  
9 this could have been done as a warrantless  
10 arrest.

11 CHIEF JUSTICE ROBERTS: Well, I  
12 thought the -- the evidence was that the -- the  
13 first two of the crimes would certainly support  
14 what was done in this case without regard to the  
15 third.

16 MS. ANAND: So that's correct, Your  
17 Honor. Would support in the sense that a  
18 magistrate could constitutionally have signed  
19 this arrest warrant. But, in fact, no  
20 magistrate did sign this arrest warrant based on  
21 just those two charges.

22 So, based on this kind of courts' case  
23 law, so, for instance, we cite the Eastern  
24 District of Michigan case in our opening brief,  
25 where the court says -- that's the case,

1 remember, where the attorney general says, I can  
2 sign warrants to authorize wiretaps. This Court  
3 says surely a magistrate would have signed off  
4 on these warrants, right? Surely, a magistrate  
5 would have caved to the national security  
6 concerns and signed these things. Still a  
7 Fourth Amendment violation because a magistrate  
8 didn't do so.

9           Again, I think this is all beyond the  
10 scope of the question presented. And, frankly,  
11 because there are indications from precedent and  
12 common law to support the Eleventh Circuit's  
13 rule, at the very least, this Court shouldn't go  
14 any further than it did in Thompson in defining  
15 the kind of precise contours of the resulted in  
16 a seizure element.

17           JUSTICE SOTOMAYOR: Are you giving up  
18 on the SG's position that -- as an alternative  
19 to the Eleventh Circuit's view, that if you can  
20 show that you were retained for longer or that,  
21 as you argued below, I understand, at least in  
22 one of your arguments, that you would have never  
23 been arrested, you would have been given a  
24 summons to appear, as the person who sold you  
25 the jewelry was, so you would have never been in

1 jail, that that would be enough? Are you giving  
2 up on that?

3 MS. ANAND: No, Your Honor. So we  
4 think -- we don't have much of a dog in this  
5 fight. We think that we win under the Eleventh  
6 Circuit's rule, we win under the SG's rule. As  
7 between the two, we think the Eleventh Circuit's  
8 rule is more consistent with this Court's  
9 precedent and with the common law.

10 But, again, we think that you should  
11 make that decision on the basis of some briefing  
12 about the text of the Fourth Amendment,  
13 Founding-era practice, common law, none of which  
14 you have before you.

15 JUSTICE SOTOMAYOR: We shouldn't reach  
16 it, is what you're saying?

17 MS. ANAND: Yes, that's right.

18 JUSTICE ALITO: Well, what if I think  
19 it is subsumed within the question presented?  
20 What is wrong with the logic of the Solicitor  
21 General's position?

22 Under Thompson, an element of the  
23 claim at issue is a seizure, and that's  
24 necessary to bring this within the Fourth  
25 Amendment. So your client was seized when he

1     was arrested, and under Thompson, he experienced  
2     a continuing seizure during the period when he  
3     was in jail.

4             And so the question is whether either  
5     his arrest or the length of his detention was  
6     the result of the charge -- the so-called  
7     money-laundering charge -- this -- I don't know  
8     why this statute is called money laundering  
9     because it doesn't seem to have anything to do  
10    with money laundering. But what's wrong with  
11    that logic? It seems to follow step by step.

12            MS. ANAND: So, again, Your Honor, I  
13    think we win under that test, right? So the  
14    police officer's affidavit in this case says we  
15    are seeking a warrant because there is a felony  
16    of the third degree. So I don't want to push  
17    too hard on this. You know, I think that that  
18    -- that's a totally acceptable result from our  
19    point of view.

20            The reason that we think that it's not  
21    -- that it's not the best way to interpret that  
22    "resulted in a seizure" language is twofold.  
23    The first is what Williams explains is that the  
24    entire point of requiring a neutral and detached  
25    magistrate to weigh in is to give that neutral

1 party the opportunity to weigh the law  
2 enforcement interests against the privacy  
3 interests.

4 And so doing this sort of  
5 counterfactual predicting what the magistrate  
6 would have done kind of undermines that goal.  
7 And so I think the Williams rule, which  
8 basically says, look, if you could have done  
9 this as a warrantless arrest, right, if you  
10 didn't need the warrant, you didn't need to have  
11 a Gerstein hearing, you know, and you only  
12 detained him for a few hours, then it's fine if  
13 the warrant process was totally corrupt. That  
14 was just something bonus you were doing.

15 But where the warrant was necessary to  
16 the detention, you could not have detained him  
17 for four days without a warrant, then we're not  
18 going to kind of peer in and try to figure out  
19 would the magistrate have reached this exact  
20 same result if it knew the actual charges  
21 against.

22 JUSTICE ALITO: What if the -- the  
23 other charges on which there were -- there was  
24 probable cause were also felonies and maybe even  
25 more serious felonies than the so-called

1 money-laundering charge? Would you make the  
2 same argument?

3 MS. ANAND: So I don't think we'd be  
4 able to make the same argument about why we win  
5 under the United States' rule. But I think that  
6 the -- I think that the Eleventh Circuit --

7 JUSTICE ALITO: But you think you  
8 should win anyway?

9 MS. ANAND: I think under the Eleventh  
10 Circuit's rule that the defense holds. And you  
11 can imagine, right --

12 JUSTICE ALITO: Why?

13 MS. ANAND: -- I mean, let's say some  
14 of them are --

15 JUSTICE ALITO: I mean, why? What if  
16 the -- one of the charges is murder and there's  
17 probable cause to support the murder charge and  
18 then they throw in this money-laundering charge?  
19 Or let's -- let's say it's an assault, and let's  
20 say there's a video when the -- the -- the  
21 legitimate owners of the ring came to the store  
22 and they were causing a fuss and your client  
23 pulled out a gun and he -- he said, get out of  
24 my store, I'm going to blow your head off? So  
25 he's charged with an assault as well as money

1       laundering. The same result?

2               MS. ANAND: So just as a preface, I  
3       think that this is the reason you should let  
4       these rules percolate, right? We should make --  
5       we should figure out how these rules actually  
6       play out in practice.

7               The reason I think it's the same  
8       result, what -- what the Williams Court would  
9       say, is there's a reason police officers lied  
10      about this charge, right, and so we're going to  
11      assume that they lied about it in part because  
12      they needed it to be able to detain the person.

13              JUSTICE ALITO: Well, that -- I mean,  
14      you may be -- this is -- the facts of this case  
15      are -- are disturbing and you may well win. But  
16      we're talking about what the general rule should  
17      be.

18              So your rule would apply in a case  
19      where the police officers act in good faith, but  
20      they just don't have probable cause? It's not  
21      limited to a case in which there was perjury or  
22      the false -- or the -- the manufacture of false  
23      evidence, right? Your rule is not limited in  
24      that way?

25              MS. ANAND: So that's correct, but we

1 think another element, right, the mens rea  
2 element, which this Court hasn't weighed in on  
3 yet and which on there's a circuit split, is the  
4 proper element to do the filtering that Your  
5 Honor's talking about.

6 And the reason why I think the more  
7 serious/less serious charge rule -- so, to be  
8 clear, I think that's a rule we could certainly  
9 live with. We win under that rule. There's  
10 some evidence in the common law, the Newell  
11 Treatise, for instance, seems to suggest that  
12 the charge lacking probable cause should be the  
13 more serious charge, so we think there's some  
14 warrant for it, but the reason we don't think  
15 it's the best option is because you can imagine  
16 a situation, for instance, where the felony  
17 charge is a white-collar offense on which, you  
18 know, no one's ever going to be detained. The  
19 misdemeanor is a resisting arrest charge that --  
20 and the -- the magistrate says, you know, that  
21 indicates some kind of dangerousness, that's the  
22 reason I'm going to detain him.

23 And so I don't think you can have a  
24 kind of categorical more serious/less serious  
25 charge rule. And, again, I think what the

1     Eleventh Circuit's rule does is it says: Look,  
2     at the point where this legal process has been  
3     tainted, remember, this Court's cases like  
4     Gerstein and County of Riverside say, if there  
5     was no legal process, right, if there's no  
6     arrest or Gerstein hearing, we actually don't  
7     care if there's all the probable cause in the  
8     world.

9             JUSTICE ALITO: Well, you're talking  
10    about being tainted. Now you're -- then you're  
11    back to the idea that Officer Everhard --  
12    Evanoff lied, right? But what if he hadn't? I  
13    mean, what if there's just a -- you know,  
14    there's no indication that there was a -- that  
15    there's a lie, there just wasn't probable cause.

16            MS. ANAND: Sure, Your Honor. So I  
17    think, in that circumstance, first, probable  
18    cause, remember, is a low bar, right? It's just  
19    a reasonable belief.

20            And, second, qualified immunity will  
21    almost certainly protect the officer in a  
22    situation where there's no probable cause, but  
23    even the judge is confused and thinks there's  
24    probable cause.

25            JUSTICE ALITO: Yeah. Well, it'll

1 protect the officer, but it won't protect the  
2 municipality.

3 MS. ANAND: That's true, Your Honor.  
4 But I'm having trouble thinking of a situation  
5 where a judge signs this thing, right, signs the  
6 arrest warrant, signs off on the Gerstein  
7 hearing, knowing all the facts the police  
8 officer accurately reported and yet there's not  
9 even probable cause.

10 JUSTICE BARRETT: Ms. Anand, can I ask  
11 you a question about the Eleventh Circuit rule?  
12 I just want to make sure I'm understanding it.

13 I had thought that one distinction --  
14 and maybe it doesn't matter, and so you can --  
15 you can tell me if it does -- is that in  
16 Williams, it was actually the -- the crime for  
17 which he was being detained and for which  
18 probable cause had been manufactured was the  
19 tainted crime and the -- the other crime for  
20 which there would have been probable cause if a  
21 warrant had been pursued was the one that had  
22 not had the adequate process.

23 And that's a different situation than  
24 we have here, right, because, here, there was a  
25 valid warrant for the misdemeanors, right? It

1 was just the money laundering.

2 And so you actually had that process  
3 observed for the two misdemeanors in a way that  
4 Williams, it was kind of like, it was blank,  
5 right, on -- on the other side, and so there was  
6 no valid process holding him. Does that -- why  
7 does that not matter? I gather you think it  
8 doesn't.

9 MS. ANAND: So I don't think it does  
10 because Williams is very clear. This is at 1165  
11 that Williams will prevail if he establishes a  
12 genuine dispute about whether at least one of  
13 the two charges against him for attempted  
14 murder, right, so, remember, there's attempted  
15 murder as to two different officers.

16 JUSTICE BARRETT: Mm-hmm.

17 MS. ANAND: The holding is he only has  
18 to prove that one of those lack probable cause.  
19 This is at 1165.

20 So it's true that in Williams, there  
21 was also this uncharged offense, but Williams  
22 just says you have to prove one of the two  
23 charges in the actual arrest warrant was bogus.

24 JUSTICE BARRETT: Okay. And then I  
25 want to understand a distinction or that I think

1 is a distinction between your position and, say,  
2 the SG's.

3 Do you agree that a seizure -- that  
4 you have to show a seizure for purposes of  
5 making out your claim?

6 MS. ANAND: So we -- we agree that you  
7 could just continue to reiterate the Thompson  
8 language, which is resulted in a seizure. We  
9 don't think this Court should use this case to  
10 go further and say that there cannot be a  
11 malicious prosecution claim predicated on, for  
12 instance, the unreasonable search clause or the  
13 warrant clause. We don't have a -- we don't  
14 think that this is the case that tees that up.

15 JUSTICE BARRETT: Well, the search  
16 clause, sure, but, I mean, is it going farther?  
17 We've said that before. I mean, you have to  
18 make out a Fourth Amendment claim. And, here,  
19 your claim is for seizure of the person.

20 You didn't make, I don't think, a  
21 separate claim about the seizure of his effects  
22 being unreasonable?

23 MS. ANAND: So -- so, below, we did  
24 argue at the seizure of his effects as well as  
25 about the unreasonable search. What's come

1 before this Court is --

2 JUSTICE BARRETT: The Court is just  
3 this one.

4 MS. ANAND: Yeah. And so --

5 JUSTICE BARRETT: Yeah.

6 MS. ANAND: -- all we're saying is  
7 that you shouldn't -- and I think we agree with  
8 the SG on this.

9 JUSTICE BARRETT: Okay.

10 MS. ANAND: You shouldn't reach out  
11 and affirmatively say there can be no other  
12 Fourth Amendment malicious prosecution claim.

13 JUSTICE SOTOMAYOR: Can you -- I'm  
14 sorry. Is one of your elements that you have to  
15 prove is lack of probable cause with respect to  
16 the one crime?

17 MS. ANAND: Mm-hmm.

18 JUSTICE SOTOMAYOR: And that that  
19 caused an unreasonable seizure?

20 MS. ANAND: The language in Thompson  
21 is, "and the malicious prosecution resulted in a  
22 seizure," which we think is consistent with any  
23 of the rules of --

24 JUSTICE SOTOMAYOR: So you're fighting  
25 with saying that it caused an unreasonable

1 seizure?

2 MS. ANAND: Yes, with the malicious  
3 prosecution caused an unreasonable seizure.

4 JUSTICE SOTOMAYOR: Are you accepting  
5 that language or are you fighting that language?

6 MS. ANAND: So I don't mean to  
7 quibble. Thompson has resulted --

8 JUSTICE SOTOMAYOR: It is important.

9 MS. ANAND: It is important. So I  
10 think the Thompson formulation is correct,  
11 "resulted in a seizure." The other elements get  
12 you to the unreasonable part.

13 JUSTICE SOTOMAYOR: What -- what are  
14 the other elements? If it doesn't cause an  
15 unreasonable seizure, how -- you're not  
16 making --

17 MS. ANAND: So what's caused the --

18 JUSTICE SOTOMAYOR: Why don't you just  
19 list what you think the elements are.

20 MS. ANAND: Right. So the appropriate  
21 mens rea, which this Court hasn't resolved,  
22 favorable termination; initiation of legal  
23 process; lacking probable cause -- so that's  
24 where the unreasonable part comes in -- resulted  
25 in a seizure.

1 All we're saying is don't double-count  
2 the unreasonable. You don't have to prove  
3 something separate from the mens rea plus lack  
4 of probable cause.

5 JUSTICE JACKSON: So, Ms. Anand, I  
6 have a question about the element that brings us  
7 here today --

8 MS. ANAND: Sure.

9 JUSTICE JACKSON: -- which is the  
10 initiation of legal process lacking probable  
11 cause, right? Am I --

12 MS. ANAND: That's correct, yes.

13 JUSTICE JACKSON: Okay. And that's  
14 separate from the causation --

15 MS. ANAND: Exactly.

16 JUSTICE JACKSON: -- that we've been  
17 discussing. I guess you're now saying that  
18 everybody's on the same page that the Sixth  
19 Circuit was wrong about that.

20 MS. ANAND: Yep.

21 JUSTICE JACKSON: Is that -- is that  
22 --

23 MS. ANAND: That's correct.

24 JUSTICE JACKSON: Okay. And I -- I'm  
25 trying to understand why the Sixth Circuit was

1 wrong, and I think I have a theory, and I'm  
2 hoping you can help me to determine whether or  
3 not I'm right about this.

4 MS. ANAND: Sure.

5 JUSTICE JACKSON: I'm wondering  
6 whether the Sixth Circuit -- whether they were  
7 just taking what is a basic principle related to  
8 probable cause in another context, the other  
9 kind of Fourth Amendment claim that one might  
10 bring is the unlawful seizure, false arrest, et  
11 cetera.

12 There, you have no probable cause.  
13 And we would say that if there are three or four  
14 different charges being brought and your claim  
15 was unlawful arrest, when you proved lack of  
16 probable cause with respect to only one of those  
17 three or four charges, we would say: Too bad,  
18 you still lose, right? So it's sort of like the  
19 same idea that the Sixth Circuit was latching  
20 onto because it -- there are cases that say  
21 that, but it seems like they're in a different  
22 context. They're not malicious prosecution  
23 theory. It's the unlawful arrest theory.

24 So it's like probable cause is doing  
25 different work depending upon the theory. Am I

1       -- does that make any sense?

2               MS. ANAND: That's exactly right.

3               JUSTICE JACKSON: Okay.

4               MS. ANAND: So that's exactly how the  
5 Sixth Circuit justified this rule.

6               JUSTICE JACKSON: Yes.

7               MS. ANAND: It said the same rules  
8 apply to false arrest and malicious prosecution.  
9 But both at common law and in this Court's  
10 Fourth Amendment cases, there has always been a  
11 distinction between the warrantless arrest  
12 context, where, as Your Honor notes, doesn't  
13 matter if the officer had one charge or 10  
14 charges or zero charges in mind, what matters is  
15 if there's probable cause out there somewhere,  
16 and the legal process cases like Gerstein and  
17 Franks and County of Riverside, where you're  
18 required to specify the charges, and that's for  
19 a couple of good reasons that I'm happy to  
20 explain.

21               JUSTICE JACKSON: And, I mean, is one  
22 of them because the malicious prosecution  
23 context is really about the culpability of the  
24 process server? It's about the person who is  
25 initiating process maliciously?

1                   It's not really about whether you were  
2     committing bad behavior, whether you were -- so,  
3     in other words, you could have a person who  
4     actually is a criminal, right, he's committing  
5     crimes, but, here -- for Charges 2, 3, and 4,  
6     but if Charge 1, there was no basis for it,  
7     baseless, and maliciously added on to the thing,  
8     that person would still -- added on to the  
9     indictment, that person would still have at  
10    least theoretically a claim for malicious  
11    prosecution with respect to that charge?

12                  MS. ANAND: That's exactly right. And  
13    that's reflected, again, in this Court's Fourth  
14    Amendment cases. So, to take an extreme  
15    example, Gerstein says that if you don't have  
16    process, right, no warrant, no hearing. It  
17    doesn't matter if you're actually guilty of  
18    absolutely everything. It's still a Fourth  
19    Amendment violation because we care about the  
20    process.

21                  The Fourth Amendment says what makes a  
22    seizure of any duration reasonable is that  
23    someone neutral and detached weighed in and  
24    signed off on this. It's not just the police  
25    officer's discretion.

1                   And what the any-crime rule would do  
2                   would basically move this back into a police  
3                   officer's discretion if they could just lie to  
4                   the magistrate about the set of charges they  
5                   have on that side.

6                   JUSTICE JACKSON:   So what are we  
7                   disputing here?  Both sides agree that the Sixth  
8                   Circuit got it wrong.  I guess I'm trying to  
9                   understand why we're continuing on.

10                  MS. ANAND:  I don't think --

11                  JUSTICE JACKSON:  Like, what is --  
12                  what is left of this case if the fundamental  
13                  issue has been essentially resolved?  There's no  
14                  one -- should we have appointed someone on the  
15                  other side of the question that was presented  
16                  here?

17                  MS. ANAND:  So I don't think so  
18                  because, you know, I -- I do think Respondents  
19                  are arguing for an affirmance on a sort of  
20                  waiver plus this other element theory.  I think  
21                  that this just means it's an easy opinion to  
22                  write.  So just last week, in Sheetz, this Court  
23                  said, when there's radical agreement that the  
24                  court below erred in applying a categorical  
25                  premise, we leave all the kind of additional

1     nuanced arguments for remand. I think this  
2     Court should follow the same course here.

3                 JUSTICE ALITO: Well, radical  
4     agreement is -- is a good thing if -- if it  
5     exists, but I'm not quite sure there was --  
6     there is radical agreement here. I thought the  
7     argument on the other side, which is presented  
8     in Respondents' brief and also in one of the  
9     amicus briefs, which I -- I don't have with me,  
10    is that the Sixth Circuit had a prior decision  
11    in which they essentially adopted the Solicitor  
12    General's position, and what they did here  
13    should be understood in light of that.

14                Isn't that -- isn't that the argument  
15    on the other side?

16                MS. ANAND: So I think the other side  
17    is making two arguments. One is the one that  
18    Your Honor articulated, which is that somehow  
19    the lower court secretly was applying a  
20    different rule. But, as the United States says  
21    at page 23, that description conflicts with the  
22    language of the decision below.

23                JUSTICE ALITO: Yeah, okay, so there's  
24    a dispute about whether they -- what they did  
25    here, whether they were following -- I've

1 forgotten the name of the earlier Sixth Circuit  
2 decision.

3 MS. ANAND: Howse. Yeah.

4 JUSTICE ALITO: Okay. Whether they  
5 were following that or not. So there's not  
6 really radical agreement as much as one might  
7 like to have it.

8 MS. ANAND: So I think that there is  
9 disagreement at about how the "caused a  
10 seizure," "resulted in a seizure" element works  
11 in the nuances, right? What counterfactual you  
12 run, how exactly -- whether it's the legal  
13 process could or the bogus charge would have or  
14 the bogus charge could have.

15 But that's a separate element from  
16 lack of probable cause. And I think everyone  
17 agrees that the decision below, which said,  
18 because probable cause existed on at least one  
19 charge, his malicious prosecution claim failed,  
20 full stop, right? That's the holding of the  
21 decision below. Everyone agrees that's not  
22 correct. That's not the rule.

23 JUSTICE BARRETT: And just to clarify  
24 on the -- the caused the seizure point, your  
25 position -- say we don't reach it -- on remand

1 would be it doesn't matter if it actually caused  
2 the seizure, it doesn't matter if these  
3 misdemeanor offenses would have led to the same  
4 amount of the three days in detention? That  
5 would be your position, right?

6 MS. ANAND: So I'd articulate it  
7 slightly differently.

8 JUSTICE BARRETT: Okay.

9 MS. ANAND: I would say that the --  
10 the tainted legal process surely caused the  
11 seizure. So, in other words, he could not have  
12 been held for four days but for this arrest  
13 warrant or some other form of process.

14 JUSTICE BARRETT: And why? Wouldn't  
15 -- would three or -- what was it, three days or  
16 four days?

17 MS. ANAND: Four days.

18 JUSTICE BARRETT: Four days. Okay.  
19 So would four days be an unreasonable length of  
20 time for a detention for the two misdemeanors?

21 MS. ANAND: It's not that it would be  
22 an unreasonable length of time. It's that  
23 Gerstein and County of Riverside say that length  
24 of detention must be authorized by a neutral and  
25 detached magistrate. And, here, a neutral and

1 detached magistrate didn't say you can detain  
2 him or even arrest him for this length of time  
3 except for -- you know, without knowing that the  
4 felony charge was bogus.

5 JUSTICE BARRETT: So you mean, just to  
6 make sure that I understand, it -- it's possible  
7 that he could have been held for the four days  
8 if the magistrate had only had in front of him  
9 the two misdemeanors, but you're saying that the  
10 presence of the third necessarily corrupts  
11 everything else and so the causation element  
12 doesn't run there?

13 MS. ANAND: That's exactly right.  
14 And, again, the only published circuit court  
15 case analyzing this question came to that  
16 result. So, you know, I think, again, this  
17 Court should weigh in on that question with the  
18 benefit of kind of full briefing argument, some  
19 sort of historical analysis, and we just don't  
20 think that's presented here.

21 CHIEF JUSTICE ROBERTS: Thank you,  
22 counsel.

23 Justice Alito?

24 JUSTICE ALITO: Well, just out of  
25 curiosity, the four days are Friday to Monday,

1 right? It's over -- it's over the weekend?

2 MS. ANAND: That's correct.

3 JUSTICE ALITO: And what happens in  
4 the city of Napoleon -- I looked up how many  
5 people there are. It's not a big city, right?

6 MS. ANAND: That's right.

7 JUSTICE ALITO: What happens with  
8 people who are arrested on a Friday?

9 MS. ANAND: So, remember, County of  
10 Riverside says that a Florida statute that says  
11 you can exclude weekends from the two-day  
12 calculation --

13 JUSTICE ALITO: I mean, what -- what  
14 happens in -- in that town?

15 MS. ANAND: So --

16 JUSTICE ALITO: All right. Let's --  
17 that's -- that's -- it's irrelevant.

18 I am somewhat curious about the --

19 MS. ANAND: Sure.

20 JUSTICE ALITO: -- the facts of this  
21 -- this case. This is a crazy little -- crazy  
22 little incident. Why didn't your client just  
23 give the police officers the ring?

24 MS. ANAND: Well, Your Honor, he asked  
25 for the opportunity to consult with counsel

1     because the hold letter was ambiguous, right?

2     It said both hold this as evidence --

3             JUSTICE ALITO:   Yeah.

4             MS. ANAND:   -- and return it.

5             JUSTICE ALITO:   I know.   I mean,  
6     there's crazy behavior on this -- on both sides,  
7     but, look, when the police officers are there  
8     and say give the ring to the -- the people who  
9     -- you know, why doesn't he just give it to  
10    them?  He paid \$45 for this, right?

11            MS. ANAND:   So, Your Honor --

12            JUSTICE ALITO:   What did he think was  
13    going to happen?  I'm going to be -- something  
14    bad is going to happen to me because I've got  
15    this ambiguous letter that says hold the ring or  
16    give the ring to the -- I forget their names --  
17    give the ring to them, something terrible is  
18    going to happen to me if I give them this ring  
19    when the police are telling me to give them the  
20    ring?

21            MS. ANAND:   So, Your Honor, maybe that  
22    goes to the reason why the Sixth Circuit found  
23    probable cause for the retaining stolen property  
24    charge, but it has nothing about felony money  
25    laundering.

1 JUSTICE ALITO: No, I --

2 MS. ANAND: And it certainly doesn't

3 --

4 JUSTICE ALITO: -- I understand. And  
5 this is not really a money-laundering statute,  
6 right?

7 MS. ANAND: That's correct, Your  
8 Honor. It's about purchasing with knowledge.  
9 And, again, even if Your Honor is correct, and  
10 I'd -- you know, I just want to say that the  
11 facts aren't quite as Your Honor is suggesting  
12 they are, it certainly doesn't justify the  
13 police officers going out, doctoring a report,  
14 securing an arrest warrant, finding a way to  
15 detain him for four days --

16 JUSTICE ALITO: No, no.

17 MS. ANAND: -- seizing his property.

18 JUSTICE ALITO: I -- I'm not getting  
19 at -- I'm kidding. I'm just wondering about  
20 the --

21 MS. ANAND: Sure.

22 JUSTICE ALITO: -- the facts of this.  
23 What -- you said it wasn't as I suggested. What  
24 did I suggest that wasn't factually --

25 MS. ANAND: So -- so it wasn't that he

1 refused to give back the jewelry. It's that he  
2 asked for time to consult with counsel before he  
3 did so.

4 JUSTICE ALITO: Okay.

5 CHIEF JUSTICE ROBERTS: Justice  
6 Sotomayor?

7 JUSTICE SOTOMAYOR: Having worked many  
8 a Saturday night to arraign people before  
9 judges, that's what some jurisdictions do.

10 (Laughter.)

11 JUSTICE ALITO: Lovely.

12 CHIEF JUSTICE ROBERTS: Justice Kagan?  
13 Justice Gorsuch?

14 JUSTICE GORSUCH: Maybe an  
15 idiosyncratic question, but on this causation  
16 element, one way I think of it is this, that  
17 malicious prosecution at common law was all  
18 about protecting the judicial process, and so  
19 the Eleventh Circuit or your view of the  
20 Eleventh Circuit's causation holding makes a  
21 great deal of sense in light of that common law  
22 background --

23 MS. ANAND: Mm-hmm.

24 JUSTICE GORSUCH: -- that it doesn't  
25 matter what actually happened. What mattered

1 was the process was tainted.

2 MS. ANAND: Mm-hmm.

3 JUSTICE GORSUCH: The problem I have  
4 is that we've thrown malicious prosecution into  
5 the Fourth Amendment context. And a seizure's  
6 got to come around someplace in the Fourth  
7 Amendment because that's what it says, right?

8 And that's where I struggle on how to  
9 put those two things together because, to me, a  
10 malicious prosecution claim naturally flows from  
11 the Due Process Clause, and it wouldn't require  
12 you to show anything other than the process was  
13 tainted.

14 MS. ANAND: Right.

15 JUSTICE GORSUCH: So help me out with  
16 that. That's not what we've done, okay?

17 MS. ANAND: So that's the first-line  
18 answer.

19 JUSTICE GORSUCH: That battle's been  
20 lost. I understand that.

21 MS. ANAND: So setting aside --

22 JUSTICE GORSUCH: Yeah.

23 MS. ANAND: -- this Court's cases, I  
24 do think that Gerstein and County of Riverside  
25 say, as a matter of the Fourth Amendment,

1 process matters, right? So Gerstein says, yes,  
2 you can make a warrantless arrest, but you've  
3 got to bring the person in front of a magistrate  
4 as soon as possible, certainly no longer than 48  
5 hours.

6 And Gerstein doesn't say: And it's  
7 okay if you actually did the crime, no need to  
8 bring them before the magistrate. It wants the  
9 process --

10 JUSTICE GORSUCH: See, that --

11 MS. ANAND: -- even if the --

12 JUSTICE GORSUCH: I'm wholly with you  
13 on due process, right?

14 MS. ANAND: But -- but Gerstein is a  
15 --

16 JUSTICE GORSUCH: As a matter of  
17 process.

18 MS. ANAND: So -- but I'll just say  
19 Gerstein --

20 JUSTICE GORSUCH: Yeah.

21 MS. ANAND: -- situates that right in  
22 the Fourth Amendment.

23 JUSTICE GORSUCH: In the Fourth  
24 Amendment. Okay. All right.

25 Let me ask you another --

1 MS. ANAND: Sure.

2 JUSTICE GORSUCH: -- idiosyncratic  
3 question.

4 MS. ANAND: Yeah.

5 JUSTICE GORSUCH: So you -- you  
6 brought a straight-up malicious prosecution  
7 claim under the common law in Count 1, your  
8 client did.

9 MS. ANAND: Mm-hmm.

10 JUSTICE GORSUCH: Also brought this --  
11 this Fourth Amendment hybrid thing in Count 3, I  
12 think it was, and got removed to federal court.

13 MS. ANAND: Mm-hmm.

14 JUSTICE GORSUCH: I -- I don't  
15 understand why -- why. Malicious prosecution in  
16 state law is a pretty easy tort to prove. Not  
17 always, but -- but you might have had a really  
18 good shot and got punitive damages and your  
19 attorney's fees and everything. Why are we  
20 making a federal case out of this?

21 MS. ANAND: Well, Your Honor, again,  
22 setting aside this Court's recent cases saying  
23 we're entitled to do that --

24 JUSTICE GORSUCH: I -- I -- I -- I'm  
25 not questioning them. I'm not questioning them.

1 MS. ANAND: Sure.

2 JUSTICE GORSUCH: I'm just asking  
3 purely strategically. I've struggled to  
4 understand why some of these cases wind up in  
5 federal court when, as an old plaintiffs'  
6 lawyer, I might have wanted to bring them in  
7 front of a state court.

8 MS. ANAND: To keep them in state  
9 court?

10 JUSTICE GORSUCH: Yeah.

11 MS. ANAND: So there's a couple of  
12 reasons just speaking at a high level of  
13 generality. So many states don't allow  
14 malicious prosecution against law enforcement,  
15 so, like, California doesn't allow that.

16 In many states, there's a high --  
17 there's a heightened mens rea. So, in the Sixth  
18 Circuit, the mens rea for the federal malicious  
19 prosecution tort is lower than for the state  
20 malicious prosecution tort.

21 JUSTICE GORSUCH: Can you tell me a  
22 little bit about that? What is that split?

23 MS. ANAND: The -- I can tell you the  
24 -- the precise split, which is that the Fourth,  
25 Sixth, and D.C. Circuits say that the mens rea

1 element is purely objective. Other circuits  
2 have imposed some sort of malice or heightened  
3 requirement.

4 JUSTICE GORSUCH: An objective mens  
5 rea, okay. Okay. Got it. All right. And did  
6 you have anything else you wanted to add? I'm  
7 sorry. I interrupted you.

8 MS. ANAND: All I wanted to say on  
9 that front is just that, you know, it was our  
10 right to bring the Fourth Amendment malicious  
11 prosecution case. And that's not just from  
12 Thompson and Manuel where I understand that Your  
13 Honor disagrees, but dating back to Gerstein  
14 and County of Riverside from the '80s and '90s,  
15 saying, and Justice Scalia explains it that, you  
16 know, the idea of a reasonable seizure at the  
17 time of the founding, what the Framers  
18 anticipated was arrest someone, you bring them  
19 before the magistrate right away, that's what  
20 constitutes a reasonable seizure. So this is a  
21 matter of what is a reasonable seizure, not just  
22 as a function of the due process clause.

23 JUSTICE GORSUCH: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice  
25 Kavanaugh?

1 Justice Barrett?

2 Justice Jackson?

3 Thank you, counsel.

4 Mr. Suri.

5 ORAL ARGUMENT OF VIVEK SURI

6 FOR THE UNITED STATES, AS AMICUS CURIAE,

7 SUPPORTING VACATUR

8 MR. SURI: Mr. Chief Justice and may  
9 it please the Court:

10 I'd like to address Justice Alito's  
11 and Justice Jackson's questions about what  
12 exactly everyone is fighting about here today.  
13 I think the main disagreement is about how far  
14 the Court ought to go in its opinion and what  
15 issues it should decide.

16 I understood Petitioner to be saying  
17 that the Court should say simply that it is  
18 possible to bring a Fourth Amendment malicious  
19 prosecution claim even when a valid charge is  
20 accompanied by a baseless charge and to stop  
21 there.

22 We think it's important for the Court  
23 to take one step further and to say that the  
24 plaintiff bears the burden of proving that the  
25 baseless charge caused an unreasonable seizure.

1                   That's an important step to take  
2           because if there's no unreasonable seizure,  
3           there's no violation of the Fourth Amendment.  
4           But it's also not a significant step to take  
5           because you'd just be reaffirming what you've  
6           already said in Thompson.

7                   Now, I understand Respondents asked  
8           the Court to take one step further still and to  
9           determine that the seizure in this particular  
10          case was reasonable. But we don't think the  
11          Court should reach that question because it  
12          hasn't been the focus of the briefing and wasn't  
13          passed on below.

14                   I welcome the Court's questions.

15                   JUSTICE SOTOMAYOR: Would your --  
16          would your formulation leave open the Eleventh  
17          Circuit rationale?

18                   MR. SURI: Yes, it would leave open  
19          the Eleventh Circuit rationale. We do think  
20          that, as Justice Barrett was --

21                   JUSTICE SOTOMAYOR: But she fought  
22          you -- she fought on that. And she may in -- in  
23          reply explain --

24                   MR. SURI: Yes.

25                   JUSTICE SOTOMAYOR: -- but why do you

1 think she fought it?

2 MR. SURI: We think that the Eleventh  
3 Circuit --

4 JUSTICE SOTOMAYOR: It's an unfair  
5 question.

6 MR. SURI: We think the Eleventh  
7 Circuit rationale makes sense in the context  
8 where there is an uncharged crime for which  
9 there was probable cause. And the police  
10 officer wants to defend manufacturing the crime  
11 that was charged on the ground that there was  
12 also this uncharged crime.

13 We don't think the Eleventh Circuit  
14 rationale makes sense in the context where there  
15 are multiple charges on which the magistrate did  
16 pass and it turns out there was no probable  
17 cause for one of them. We don't think the Court  
18 needs to get into that issue in order to resolve  
19 this case.

20 JUSTICE ALITO: In this case, there is  
21 evidence from which one could infer that the  
22 magistrate would not have issued an arrest  
23 warrant were it not for the felony charge as to  
24 which there was no probable cause.

25 But it does strike me that in many

1     other cases, there -- it will be very difficult  
2     -- and I don't know how a plaintiff would prove  
3     that the charge that -- for which there was no  
4     probable cause was the one that resulted in the  
5     decision to arrest as opposed to just issue a  
6     summons.

7                 MR. SURI: Justice Alito, I appreciate  
8     that it may be difficult for the plaintiff to  
9     make that showing, and since it's an element of  
10    the claim, the failure to make the showing would  
11    mean that the plaintiff would lose.

12                But I could point out a few ways in  
13    which a plaintiff might be able to make that  
14    showing.

15                First, if there's a bail determination  
16    and the -- and the judge sets higher bail  
17    because of a felony charge that was added to a  
18    misdemeanor charge, but it turns out that the  
19    felony charge was fabricated, that might be a  
20    circumstance where it's possible to show that  
21    the felony charge was the cause of the  
22    detention.

23                In addition, state law might provide  
24    that certain minor offenses result only in a  
25    citation or a summons, but more serious offenses

1 can result in pretrial detention. That's  
2 another way in which the plaintiff could make  
3 that showing.

4 Ultimately, however, it would depend  
5 on the facts and circumstances of the case.

6 JUSTICE ALITO: Presumably the -- the  
7 plaintiff would not be able to depose the  
8 magistrate and ask the magistrate what would you  
9 have done?

10 MR. SURI: That's right, Justice  
11 Alito. We see this kind of inquiry in other  
12 areas of criminal procedure, for example, in an  
13 ineffective assistance of counsel claim, you ask  
14 what would the court have done but for counsel's  
15 error or in a Brady claim, what would the jury  
16 have done but for the suppression of particular  
17 evidence.

18 And you don't have people deposing the  
19 judge or the jury. You just ask objectively  
20 what would have happened in those circumstances.  
21 We envision a similar inquiry here.

22 JUSTICE BARRETT: So would it be -- so  
23 I -- I -- to make sure that I understand your  
24 response to Justice Alito, because I was trying  
25 to figure out from your brief exactly what your

1 position was and if it was distinct from  
2 Respondents'.

3           You see it as kind of a but-for  
4 inquiry, like you don't see it as asking would  
5 it have been reasonable to detain him, say, for  
6 four days base based on these two misdemeanors,  
7 you think the right inquiry is to say would he,  
8 in fact, have said four days is sufficient?

9           MR. SURI: Would the magistrate, in  
10 fact, have authorized the additional detention.  
11 And the bail example might make that  
12 particularly clear, what the distinction between  
13 us and Respondents would be.

14           We would say if the magistrate says  
15 I'm issuing this higher bail, which it turns out  
16 the defendant can't pay because of the felony  
17 charge, that should be enough to show that  
18 that's an unreasonable seizure if the felony was  
19 a fabricated charge.

20           But I take Respondents to be saying  
21 that if the magistrate could have simply denied  
22 bail outright as a matter of federal  
23 constitutional law, then there's no Fourth  
24 Amendment violation.

25           JUSTICE KAGAN: But just to make sure

1 I have this right, you do not think that we  
2 should engage on that issue?

3 MR. SURI: Correct.

4 JUSTICE KAGAN: And why not?

5 MR. SURI: It's not been the focus of  
6 the briefing and it's not what the court below  
7 decided. In addition, the unreasonable seizure  
8 question raised -- raises a variety of nuanced  
9 issues, for example, distinguishing between a --  
10 a fabricated charge that was presented to the  
11 magistrate and a fabricated charge for which  
12 there was probable cause that wasn't presented  
13 to the magistrate.

14 Distinguishing between the first 48  
15 hours after the arrest and the pretrial  
16 detention that happens after, between bail and  
17 other procedures that might happen during the  
18 pretrial procedure. It's just too complicated  
19 to get into without briefing.

20 JUSTICE KAGAN: And as to the two  
21 questions that you think we should address, the  
22 one that Ms. Anand agrees with and then you  
23 added that, of course, this would have to cause  
24 a seizure, but there's no disagreement on that  
25 one either, is there?

1           MR. SURI: I take Petitioner to be  
2     suggesting that it's also possible to bring the  
3     Fourth Amendment malicious prosecution claim  
4     under the warrant clause based on the issuance  
5     of a warrant that's never executed and when no  
6     seizure was --

7           JUSTICE KAGAN: I see. I -- I took  
8     her to say something like we -- we should just  
9     leave that to the side. And you think we  
10    shouldn't leave that to the side?

11          MR. SURI: I think that the Court  
12    should say that to bring this particular type of  
13    claim, the Manuel, Thompson, Fourth Amendment  
14    malicious prosecution claim, an unreasonable  
15    seizure is required, that's in Thompson itself.

16          Of course there may be a separate  
17    claim under the warrant clause that's cognizable  
18    under 1983, but that may have a different common  
19    law analog. It may be that the common law  
20    analog for that isn't malicious prosecution.  
21    There's a separate tort that I found preparing  
22    for this case called malicious procurement of a  
23    warrant. Maybe that's the appropriate analog.

24          That's why we suggested you limit your  
25    focus to the seizure provision.

1 JUSTICE JACKSON: But you're -- you're  
2 saying we should not, just to piggyback on  
3 Justice Kagan's last question, that you would  
4 have us stop at just saying that for this kind  
5 of claim, you have to have caused -- the  
6 baseless charge has to have caused an  
7 unreasonable seizure but not get into how one  
8 would go about proving that?

9 MR. SURI: That's correct. That would  
10 be enough to resolve the circuit split.

11 JUSTICE KAGAN: I took Ms. Anand to be  
12 agreeing with all of that. So maybe I'll just  
13 put in a request with Ms. Anand to say on  
14 rebuttal whether you agree with all of that.

15 CHIEF JUSTICE ROBERTS: Thank you,  
16 counsel.

17 Justice Alito? Anything further?

18 Okay, thank you, counsel.

19 Ms. Wold.

20 ORAL ARGUMENT OF MEGAN M. WOLD

21 ON BEHALF OF THE RESPONDENTS

22 MS. WOLD: Mr. Chief Justice and may  
23 it please the Court:

24 When a plaintiff brings a Section 1983  
25 malicious prosecution claim under the Fourth

1 Amendment, the plaintiff must show that the  
2 alleged malicious prosecution resulted in the  
3 plaintiff's seizure, as this Court held in  
4 Thompson.

5           The Sixth Circuit correctly concluded  
6 that Petitioner cannot make that showing because  
7 probable cause supported his detention.  
8 Petitioner was arrested and detained for three  
9 days pursuant to a warrant supported by probable  
10 cause for two first degree misdemeanor crimes,  
11 each carrying a sentence up to six months  
12 imprisonment.

13           In light of that, the presence of a  
14 third charge, allegedly lacking probable cause,  
15 could not have resulted in Petitioner's  
16 detention. This result flows directly from  
17 existing Fourth Amendment precedents, including  
18 Devenpeck versus Elford and Whren versus United  
19 States, which make clear that a seizure does not  
20 violate the Fourth Amendment "as long as the  
21 circumstances viewed objectively justify that  
22 action."

23           Or, as those precedents also state,  
24 Fourth Amendment reasonableness allows certain  
25 actions to be taken in certain circumstances,

1     whatever the subjective intent an arresting  
2     officer is alleged to have had.

3             Moreover, in Baker versus McCollan,  
4     the Court concluded that a three-day seizure  
5     like Petitioner's did not violate the Fourth  
6     Amendment because the arrest and detention was  
7     pursuant to a warrant supported by probable  
8     cause, even though police in that case had  
9     actually detained an innocent individual based  
10    on a mistaken identification.

11            Applying the correct Fourth Amendment  
12    rule here means setting aside the charge that  
13    Petitioner alleges to have lacked probable cause  
14    and assessing whether the remaining charges  
15    objectively justify his detention. They clearly  
16    do, and so I urge the Court to affirm the  
17    decision below.

18            And I welcome your questions.

19            CHIEF JUSTICE ROBERTS: What happened  
20    to this radical agreement we heard of?

21            (Laughter.)

22            MS. WOLD: It was news to me that  
23    there was radical agreement. I think what has  
24    happened is that Petitioner has created this  
25    any-crime rule that was, in fact, a rule that

1 the Sixth Circuit had not adopted. Under this  
2 any-crime straw man rule, it would mean that the  
3 presence of one charge supported by probable  
4 cause automatically justifies any detention. I  
5 don't think that's what the Sixth Circuit  
6 thought. That's not what the relevant Sixth  
7 Circuit precedent had held, that the panel below  
8 was applying.

9 And I would point the Court to the  
10 decision below at Cert Appendix pages 9a and  
11 10a, where the court articulates in a paragraph  
12 the standard that it's applying for malicious  
13 prosecution. And it says that the success of  
14 the malicious prosecution claim depends on  
15 whether probable cause supported his detention.

16 And so we need to know what the  
17 Petitioner's detention was. And here it was  
18 this few days' detention pursuant to a warrant  
19 supported by probable cause on two charges. And  
20 that satisfies Fourth Amendment reasonableness.  
21 So there can be no Fourth Amendment malicious  
22 prosecution claim.

23 JUSTICE SOTOMAYOR: What do I do with  
24 the language of the court that says, moreover,  
25 we can affirm the district court's decision if

1     probable cause supports one or more of the three  
2     charges?

3                 MS. WOLD:   I --

4                 JUSTICE SOTOMAYOR:   That's a -- that's  
5     an every crime exception.

6                 MS. WOLD:   I realize that.   I would  
7     again point the Court to the paragraph that I  
8     referenced because that's where they articulate  
9     the standard.   And if there's anything that  
10    might be somewhat unsatisfactory about the lower  
11    court opinion, it's that they are joining  
12    together the false arrest, false imprisonment,  
13    and malicious prosecution analyses.   And I think  
14    that may cause some shorthand to appear later in  
15    the opinion that gives that impression.

16                But I think it's important to note  
17    what --

18                JUSTICE SOTOMAYOR:   So do you disagree  
19    with the Solicitor General that if -- I don't  
20    know how we get to this proof, but assuming it  
21    could be made -- that absent the felony charge,  
22    no arrest warrant would have issued?

23                MS. WOLD:   Oh, no.   I absolutely --

24                JUSTICE SOTOMAYOR:   A summons would  
25    have issued?   Do you think then that it's an

1 unreasonable seizure to have gotten the warrant?

2 MS. WOLD: No, I disagree. And -- and  
3 that's not the way Fourth Amendment precedents  
4 operate in this area. We look at the detention  
5 and we ask whether it is objectively justified.  
6 I would point out as well that even on the face  
7 of the warrant --

8 JUSTICE SOTOMAYOR: So what makes -- a  
9 -- a seizure can be permitted but the detention  
10 unreasonable.

11 MS. WOLD: Absolutely. And I think  
12 that might arise in circumstances where a -- a  
13 particular offense is maybe a fine-only offense,  
14 for example, and that's the only charge that --  
15 that can provide probable cause. A more serious  
16 charge that accompanied it lacks probable cause,  
17 well, certainly at some point the detention, and  
18 certainly beyond 48 hours for an uncharged  
19 crime, is always going to be unreasonable under  
20 the Fourth Amendment. I did --

21 JUSTICE KAGAN: Just -- just to get  
22 back to the question that Justice Sotomayor  
23 asked about, that language, I understand that  
24 you're saying we shouldn't take that language at  
25 face value, but if that language were taken at

1 face value to -- to mean what Justice Sotomayor  
2 suggested it meant, which is that any crime gets  
3 you out of -- you do disagree with that?

4 MS. WOLD: You're talking about the  
5 language in the Sixth Circuit opinion. If it  
6 meant an any-crime rule the way Petitioner  
7 defines it, that any probable cause  
8 automatically insulates any detention, yes, we  
9 agree that would be incorrect. We don't think  
10 that's what the Sixth Circuit applied.

11 If, however, you look at the Sixth  
12 Circuit opinion and you disagree and you think  
13 that is the standard that the Sixth Circuit  
14 applied, then we think you should announce the  
15 right rule. And we, I think, largely agree with  
16 the United States about what that rule is. But  
17 we also think you should apply it in this case.  
18 There's ample precedent for -- for doing that in  
19 Crawford and Employment Division versus Smith,  
20 Terry versus United States, Katz versus United  
21 States, and we think that would be appropriate  
22 to do here.

23 JUSTICE KAGAN: So you would say,  
24 first, we knock off the any-crime. Then we say  
25 that the -- that there has to be a showing of

1 causation as to the detention or the seizure.

2 But then you want us to go further  
3 than the Solicitor General by saying what the  
4 right way to show causation is. Is that right?

5 MS. WOLD: Well, certainly not the  
6 right way in every case, but I think the way we  
7 ask you then to apply the rule you would set out  
8 is according to existing Fourth Amendment  
9 precedents.

10 And even if you weren't willing to go  
11 ahead and apply the rule in this case, we do  
12 think the Court should make clear that when  
13 Manuel and then Thompson, in particular,  
14 recognized a Fourth Amendment malicious  
15 prosecution claim, they weren't recognizing a  
16 brand-new body of Fourth Amendment law that was  
17 going to create standards that are different  
18 than in other areas.

19 We think the applicability of  
20 reasonability should continue to be as it  
21 already is in the Fourth Amendment. And to the  
22 extent that's dissatisfactory, it would be, as  
23 Justice Gorsuch suggests, potentially possible  
24 to locate the claim in the Fourteenth Amendment.  
25 And there may be efforts to do so. The Court

1 has explicitly reserved that possibility.

2 JUSTICE JACKSON: So how is it that it  
3 applies here? Can you -- so what is your  
4 standard for causation?

5 MS. WOLD: So we just think it's the  
6 application of ordinary Fourth Amendment  
7 principles. So you would look at the warrant,  
8 just as you do under Franks, and exclude the  
9 information that is alleged to be false. It's  
10 alleged to be the malicious prosecution  
11 evidence, if you will. And you would look at  
12 what remains, and you would ask whether there is  
13 probable cause and whether that supports the  
14 detention.

15 JUSTICE JACKSON: But I guess, to look  
16 at ordinary principles, a lot of those ordinary  
17 principles come up in a different context. So  
18 it's hard to really say that they should  
19 translate and drive the analysis here.

20 I mean, I had a whole colloquy with  
21 Ms. Anand about false arrest, probable cause,  
22 and what we look at and what we care about being  
23 different than the probable cause element. And  
24 I understand we're talking about the causation  
25 element, but the gravamen of a malicious

1 prosecution claim is not the same as the  
2 gravamen of an unlawful arrest claim. And so  
3 when you're thinking about unreasonableness for  
4 the -- from the standpoint of causation, I guess  
5 I'm a little worried about treating them the  
6 same.

7 MS. WOLD: So the Fourth Amendment, as  
8 we know, prohibits unreasonable seizures but not  
9 unreasonable charges. And we think that's the  
10 difference. And if there's any kind of misfit  
11 between these things, I think the Court was well  
12 aware of that in Thompson, understanding that  
13 the common-law malicious prosecution --

14 JUSTICE JACKSON: No, but isn't it --  
15 isn't it -- isn't it, in the malicious  
16 prosecution context, the malicious and  
17 unreasonable charge has caused, as you say, the  
18 unlawful seizure. And so when we're looking at  
19 causation, it's very hard for me to understand  
20 how you can take out of the picture, as you --  
21 as you did with your definition, the malicious  
22 prosecution.

23 What Ms. Anand is saying is that when  
24 you have a malicious initiation of charges, that  
25 sort of taints the process. And it's very --

1     you know, it's almost like you have to presume  
2     that almost everything that happened afterwards  
3     was tainted by that, unless we have clear  
4     evidence that you could have proceeded without  
5     the -- the malicious prosecution.

6                 And you seem to be saying the opposite  
7     in a -- in a way.

8                 MS. WOLD: I think that those same  
9     kinds of arguments could have been put forward,  
10    I think were put forward, in Devenpeck versus  
11    Alford, about the way we handle this in the  
12    context of a false arrest. And the answer was a  
13    Fourth Amendment answer about reasonableness and  
14    that Fourth Amendment reasonableness does not  
15    depend on the subjective intent of a particular  
16    officer. We know that from Whren, from  
17    Devenpeck, from numerous other cases. It also  
18    doesn't --

19                JUSTICE JACKSON: But that's because  
20    that's not a malicious prosecution scenario. I  
21    mean, this is -- this is the precise point,  
22    right? When you take the jurisprudence that  
23    relates to the reasonableness of just an  
24    unlawful arrest, I totally buy what you're  
25    saying. We're not -- because we're not really

1 focusing on the intent of the officer, we're  
2 looking at the circumstances and whether or not  
3 an objective officer with those circumstances  
4 would have arrested you and behaved in that way.

5 But when you're beginning in the world  
6 of malicious prosecution, the thing that we care  
7 about is the intent and the maliciousness and  
8 what the process is doing to you for baseless  
9 reasons.

10 And so once we're -- we're starting  
11 there, it seems to me you can't really judge the  
12 causation by those other standards, by standards  
13 that say, well, we don't really care what the  
14 officer was thinking. We're -- we've already  
15 crossed that bridge because we're in the world  
16 of malicious prosecution.

17 MS. WOLD: I think that Thompson  
18 answers this question by requiring that there be  
19 an unreasonable seizure because Thompson was  
20 locating the claim in the Fourth Amendment or at  
21 least acknowledging it as a type of Fourth  
22 Amendment claim that could be brought.

23 And I think the kinds of things you're  
24 discussing might be more at home in the  
25 Fourteenth Amendment. But it's not been a part

1 of our Fourth Amendment analysis. And I don't  
2 think that Thompson was creating a rule by which  
3 there would be a -- a new type of claim and it  
4 would have brand-new elements and change the  
5 meaning of probable cause.

6 I think Thompson was acknowledging  
7 that this claim could be brought under the  
8 Fourth Amendment, but I don't think there's any  
9 reason to deviate from Fourth Amendment  
10 principles --

11 JUSTICE BARRETT: Ms. --

12 MS. WOLD: -- beyond that.

13 JUSTICE BARRETT: Ms. Wold, if we do  
14 what the SG proposes that we do and say, you  
15 know, the any-crime rule is not good, but you do  
16 have to show causation and that -- and that this  
17 caused a seizure in order to make out the Fourth  
18 Amendment claim, what happens on remand? What  
19 arguments, then, do you make?

20 MS. WOLD: Well, I think on remand, we  
21 would continue to argue, as I would ask the  
22 Court to also state, that Fourth Amendment --  
23 existing Fourth Amendment principles apply. And  
24 so the question is whether his detention is  
25 justified by probable cause.

1 JUSTICE BARRETT: And so this would be  
2 the colloquy that you're having with Justice  
3 Jackson right now saying that we look at it  
4 objectively and we say: Was this four days, if  
5 you cross out, put your hand over the money  
6 laundering charge, would it have been reasonable  
7 to hold him for four days for these two  
8 misdemeanors?

9 MS. WOLD: Yes, that's exactly right.  
10 So you would ask based on the probable cause  
11 that we know is determined by a neutral and  
12 detached magistrate at the issuance of the  
13 warrant, the probable cause in those two charges  
14 clearly justifies the entirety of his detention,  
15 and that would resolve the issue.

16 JUSTICE BARRETT: Does it get tricky?  
17 I mean, I'm not sure any of our precedent  
18 squarely addresses this point.

19 When do we stop thinking about the  
20 Fourth Amendment and start thinking about, say,  
21 speedy trial or is this -- is he being held so  
22 long that we're violating the Sixth Amendment or  
23 was this fine so high it's actually, you know,  
24 an excessive fine problem?

25 Is all this really -- and is that

1 maybe another reason for caution here? Is all  
2 this really a Fourth Amendment issue?

3 MS. WOLD: So I think the recognition  
4 that pretrial detention could be a Fourth  
5 Amendment claim arises in 2017 with Manuel. So  
6 some of these questions may be a bit new.

7 I do think in the past the Court has  
8 resolved some questions about length of  
9 detention by asking at some point if that  
10 detention becomes punishment and then it's  
11 punishment without conviction. And that can  
12 fall under other provisions of the Constitution.

13 Maybe it's an unsatisfactory answer.  
14 I think there are complicating factors here. I  
15 think this case and these facts are not  
16 difficult because the detention is so limited  
17 and it clearly corresponds to the length of  
18 detention the Court has found to be reasonable  
19 under the Fourth Amendment in other cases, like  
20 Baker versus MCollen, where, you know, there you  
21 had the wrong person. That person was  
22 completely innocent and saying so from the  
23 moment of arrest onward, but the warrant was  
24 valid. The warrant was supported by probable  
25 cause, and that justified the detention for a

1 matter of days.

2 JUSTICE BARRETT: Thank you.

3 JUSTICE GORSUCH: I would just like to  
4 understand better the -- if we were to remand  
5 for some sort of causation showing here, exactly  
6 what your argument would be.

7 Would it be that probable cause  
8 existed sufficient on the two charges that  
9 remained and that that would be enough to  
10 justify four days or would it be that there's  
11 probable cause under any laws that we can point  
12 to that would suffice to support four days?

13 MS. WOLD: It -- it would be -- well,  
14 first, obviously, I don't want to exclude on  
15 remand that we might make lots of arguments, but  
16 I think the argument I'm positing today is that  
17 the two charges that were the subject of the  
18 warrant, those supply probable cause, not some  
19 kind of uncharged conduct, not under any law.

20 JUSTICE GORSUCH: I guess I'm  
21 wondering why that would be the case under your  
22 logic. If we're going to take the Fourth --  
23 we're trying to import Fourth Amendment  
24 principles further into this malicious  
25 prosecution claim, a false arrest seems to be

1     where you're kind of driving the train -- and  
2     wanting to -- I might be mistaken there.

3                 And -- and there I'm not sure we would  
4     always be limited to the indictment or charge.  
5     We would look and see if there is probable cause  
6     to support the detention vel non.

7                 MS. WOLD: Right. I think in this  
8     case it wouldn't be enough to look at uncharged  
9     conduct because the seizure lasted more than 48  
10    hours. So there wouldn't be a probable cause  
11    determination by a neutral and detached  
12    magistrate as to uncharged conduct. And that's  
13    why you couldn't do what you could otherwise do  
14    in the false arrest context.

15                JUSTICE GORSUCH: Well, not looking  
16    necessarily at uncharged conduct, but -- I  
17    understand that limitation, but the claims that  
18    the government might bring. Why would you be  
19    limited on that?

20                MS. WOLD: Maybe I'm failing to  
21    understand the question, but I think when the  
22    government is holding someone beyond 48 hours --

23                JUSTICE GORSUCH: No, you've got to  
24    come up with a crime. But there's a lot of  
25    crimes out there these days, not just those you

1     happen to charge.

2                 MS. WOLD:   That's correct, but this is  
3     all after the fact.   And so here we know the  
4     detention went beyond 48 hours.   We are limited  
5     to -- to claims that were charged.

6                 JUSTICE GORSUCH:   Okay.   All right.  
7     Thank you.

8                 JUSTICE JACKSON:   So it seems to me  
9     that your causation rule eviscerates the kind of  
10    plaintiff dynamic that I explored with Ms.  
11    Anand.   And maybe you can help me understand why  
12    that's the case -- why that's not the case.

13                So I said we have a person who is a  
14    criminal, and he's committing crimes.   And he  
15    has got three or four of them absolutely dead to  
16    rights, but one of them, no.   One of them, he  
17    says, this additional thing, whatever it is, I  
18    didn't do it.   And because I'm, you know, a  
19    career criminal, the police officer knows me  
20    from way back when, and he actually tacked that  
21    on after he made stuff up and he -- this charge  
22    is a malicious prosecution.

23                It seems to me that if we buy your  
24    rule of causation, so, first of all, we don't  
25    say, you know, any charge, he still gets to go

1 forward, just because there are these other  
2 charges, he still gets to go forward on that  
3 basis, but you're knocking him out basically for  
4 the same reason on the causation prong.

5 You're saying because you have these  
6 other charges for which you could have been  
7 arrested, and perhaps he even agrees to that,  
8 you're not allowed, because you can't say that  
9 the baseless charge caused.

10 And I guess I don't understand why  
11 that's the case. Why shouldn't he still be able  
12 to make his claim on the civil docket with  
13 respect to the malicious prosecution of that one  
14 charge?

15 MS. WOLD: I think you've absolutely  
16 highlighted the distinction between our  
17 positions. I think Williams versus Aguirre,  
18 which Petitioner embraces, would hold that you  
19 could make out a per se constitutional violation  
20 for that alleged malicious prosecution.

21 And we think that's incorrect. And we  
22 think that's because of the operation of the  
23 Fourth Amendment. The correct rule is a Fourth  
24 Amendment rule. How could you have a per se  
25 constitutional violation for an unreasonable

1 charge, which the Fourth Amendment does not  
2 forbid, without an unreasonable seizure? And --  
3 and we think it's the Fourth Amendment that does  
4 the work there. And --

5 JUSTICE JACKSON: So what if the other  
6 crimes are all misdemeanors and he can show --  
7 we have this coming up in other cases -- that no  
8 one would ever have been prosecuted or held or  
9 detained for the three other things. Yes, he  
10 says, I did those things, but those are not  
11 things for which people get detained.

12 It's the one they made up. And  
13 that's, in fact, why they made it up because  
14 they wanted me to go to jail. Does he go  
15 forward or no under your causation prong?

16 MS. WOLD: We still think it is the  
17 overlay of existing Fourth Amendment precedent  
18 that asks about that objectively. And -- and  
19 that means that if those misdemeanor charges,  
20 regardless of local practice, even if it hadn't  
21 been local practice to arrest for those, the  
22 Fourth Amendment says you can arrest for even a  
23 fine-only offense. That's Atwater versus City  
24 of Lago Vista.

25 And the Fourth Amendment also allows

1 an arrest, even if it would be unlawful under  
2 state law. That's Virginia versus Moore. Those  
3 don't violate the Fourth Amendment, so you can  
4 hold those individual. Now, it would be a  
5 different case if the detention is for 18  
6 months, for example. And the only probable  
7 cause that supports it are for these very minor  
8 misdemeanor offenses.

9 JUSTICE JACKSON: Well, it doesn't  
10 matter to you at all if there's evidence that he  
11 puts forward that no one would ever -- that this  
12 magistrate, in fact, wouldn't have or didn't,  
13 you know, go forward with respect to this --  
14 authorizing this detention but for the baseless  
15 charge that -- that was put there in order to  
16 get him to go to jail?

17 MS. WOLD: That's right. We think  
18 that is exactly the kind of analysis that the  
19 Fourth Amendment forecloses. And I can point to  
20 Whren, Virginia versus Moore, that all say the  
21 Fourth Amendment reasonableness does not depend  
22 on local practice. It doesn't depend on state  
23 law. It doesn't vary from place to place and  
24 from time to time. And that is just settled  
25 Fourth Amendment law.

1 JUSTICE GORSUCH: Counsel, let's say I  
2 -- I understand all that and maybe -- maybe even  
3 am slightly sympathetic to it. But what about  
4 the Fourteenth Amendment and what about the  
5 common law malicious prosecution claims, which  
6 didn't depend upon showing that all the charges  
7 against me were false?

8 MS. WOLD: I think those standards  
9 could definitely be different. Under those, I  
10 think under state law, there is no requirement  
11 that you show a seizure, so the analysis would  
12 be different. That claim has been abandoned by  
13 this stage in the litigation.

14 And, yes, under the Fourteenth  
15 Amendment, you wouldn't have this requirement to  
16 show a seizure. I think the analysis would be  
17 different if the Court were to recognize it in  
18 the future.

19 CHIEF JUSTICE ROBERTS: Thank you,  
20 counsel.

21 Justice Alito?

22 Justice Sotomayor, anything more?

23 Justice Kagan?

24 Justice Gorsuch? No?

25 Thank you, counsel.

1 MS. WOLD: Thank you.

2 CHIEF JUSTICE ROBERTS: Rebuttal?

3 REBUTTAL ARGUMENT OF EASHA ANAND

4 ON BEHALF OF THE PETITIONERS

5 MS. ANAND: Thank you, Your Honor.

6 So, to answer Justice Kagan's question  
7 first, we are totally fine with the United  
8 States' position, answer the question presented,  
9 reiterate what you said in Thompson, that the  
10 malicious prosecution must have resulted in a  
11 seizure, which, as the United States points out,  
12 is perfectly consistent with our preferred  
13 Eleventh Circuit formulation, and don't touch  
14 the question of the warrant clause.

15 We raised the warrant clause to talk  
16 about the values and purposes of the Fourth  
17 Amendment only, not to suggest there is  
18 necessarily a 1983 claim predicated on it or  
19 what constitutional tort applies.

20 As for Respondents' position, I'll  
21 just note that what they're now describing as a  
22 strawman is precisely what they argued for  
23 below. Here's a quote from oral argument: "So  
24 long as probable cause exists to one of multiple  
25 criminal charges, that is enough to negate the

1 entire malicious prosecution claim."

2           This Court can do a lot of good by  
3 just resolving the question presented and saying  
4 that the -- the any-crime rule, as Justice  
5 Gorsuch said, you can always come up with some  
6 crime for which there's probable cause. And so  
7 the any-crime rule allows police officers to  
8 entirely insulate their misconduct by just  
9 tacking on a charge for which there is probably  
10 probable cause for just about anyone.

11           This Court can do a lot of good by  
12 just saying that that rule is incorrect, that a  
13 plaintiff can make out a malicious prosecution  
14 claim even if some charges are supported by  
15 probable cause, and we'll fight about all the  
16 complexities that Your Honors heard about on  
17 remand. Thank you.

18           CHIEF JUSTICE ROBERTS: Thank you,  
19 counsel.

20           The case is submitted.

21           (Whereupon, at 12:44 p.m., the case  
22 was submitted.)

23

24

25

## Official - Subject to Final Review

<p><b>\$</b></p> <p><b>\$45</b> [1] 30:10</p> <hr/> <p><b>1</b></p> <p><b>1</b> [2] 23:6 35:7</p> <p><b>10</b> [1] 22:13</p> <p><b>10a</b> [1] 49:11</p> <p><b>11:45</b> [2] 1:15 3:2</p> <p><b>1165</b> [2] 16:10,19</p> <p><b>12:44</b> [1] 69:21</p> <p><b>15</b> [1] 1:11</p> <p><b>18</b> [1] 66:5</p> <p><b>1983</b> [3] 45:18 46:24 68:18</p> <hr/> <p><b>2</b></p> <p><b>2</b> [1] 23:5</p> <p><b>2017</b> [1] 60:5</p> <p><b>2024</b> [1] 1:11</p> <p><b>23</b> [1] 25:21</p> <p><b>23-50</b> [1] 3:4</p> <hr/> <p><b>3</b></p> <p><b>3</b> [3] 2:4 23:5 35:11</p> <p><b>38</b> [1] 2:8</p> <hr/> <p><b>4</b></p> <p><b>4</b> [1] 23:5</p> <p><b>46</b> [1] 2:11</p> <p><b>48</b> [8] 6:4,6 34:4 44:14 51:18 62:9,22 63:4</p> <hr/> <p><b>6</b></p> <p><b>68</b> [1] 2:14</p> <hr/> <p><b>8</b></p> <p><b>80s</b> [1] 37:14</p> <hr/> <p><b>9</b></p> <p><b>90s</b> [1] 37:14</p> <p><b>9a</b> [1] 49:10</p> <hr/> <p><b>A</b></p> <p><b>a.m</b> [2] 1:15 3:2</p> <p><b>abandoned</b> [1] 67:12</p> <p><b>able</b> [5] 11:4 12:12 41:13 42:7 64:11</p> <p><b>above-entitled</b> [1] 1:13</p> <p><b>absent</b> [1] 50:21</p> <p><b>absolutely</b> [5] 23:18 50:23 51:11 63:15 64:15</p> <p><b>acceptable</b> [1] 9:18</p> <p><b>accepting</b> [1] 19:4</p> <p><b>accompanied</b> [2] 38:20 51:16</p> <p><b>according</b> [1] 53:8</p> <p><b>accurately</b> [1] 15:8</p> <p><b>acknowledging</b> [2] 57:21 58:6</p> <p><b>act</b> [1] 12:19</p> <p><b>action</b> [1] 47:22</p> <p><b>actions</b> [1] 47:25</p> <p><b>actual</b> [2] 10:20 16:23</p> <p><b>actually</b> [12] 12:5 14:6 15:16 16:2 23:4,17 27:1 32:25 34:7 48:9 59:23 63:20</p> <p><b>add</b> [1] 37:6</p>	<p><b>added</b> [4] 23:7,8 41:17 44:23</p> <p><b>addition</b> [2] 41:23 44:7</p> <p><b>additional</b> [3] 24:25 43:10 63:17</p> <p><b>address</b> [4] 4:1,11 38:10 44:21</p> <p><b>addresses</b> [1] 59:18</p> <p><b>adequate</b> [1] 15:22</p> <p><b>adopted</b> [2] 25:11 49:1</p> <p><b>affidavit</b> [1] 9:14</p> <p><b>affirm</b> [2] 48:16 49:25</p> <p><b>affirmance</b> [1] 24:19</p> <p><b>affirmatively</b> [1] 18:11</p> <p><b>afterwards</b> [1] 56:2</p> <p><b>agree</b> [8] 5:11 17:3,6 18:7 24:7 46:14 52:9,15</p> <p><b>agreeing</b> [1] 46:12</p> <p><b>agreement</b> [6] 24:23 25:4,6 26:6 48:20,23</p> <p><b>agrees</b> [5] 3:11 26:17,21 44:22 64:7</p> <p><b>Aguirre</b> [1] 64:17</p> <p><b>ahead</b> [1] 53:11</p> <p><b>aired</b> [1] 4:12</p> <p><b>AL</b> [2] 1:3,6</p> <p><b>Alford</b> [1] 56:11</p> <p><b>ALITO</b> [35] 8:18 10:22 11:7,12,15 12:13 14:9,25 25:3,23 26:4 28:23,24 29:3,7,13,16,20 30:3,5,12 31:1,4,16,18,22 32:4,11 40:20 41:7 42:6,11,24 46:17 67:21</p> <p><b>Alito's</b> [1] 38:10</p> <p><b>allegations</b> [1] 5:6</p> <p><b>alleged</b> [5] 47:2 48:2 54:9,10 64:20</p> <p><b>allegedly</b> [1] 47:14</p> <p><b>alleges</b> [1] 48:13</p> <p><b>allow</b> [2] 36:13,15</p> <p><b>allowed</b> [1] 64:8</p> <p><b>allows</b> [3] 47:24 65:25 69:7</p> <p><b>almost</b> [3] 14:21 56:1,2</p> <p><b>already</b> [3] 39:6 53:21 57:14</p> <p><b>alternative</b> [1] 7:18</p> <p><b>ambiguous</b> [2] 30:1,15</p> <p><b>Amendment</b> [75] 3:14,24 4:5,20 6:4 7:7 8:12,25 17:18 18:12 21:9 22:10 23:14,19,21 33:5,7,25 34:22,24 35:11 37:10 38:18 39:3 43:24 45:3,13 47:1,17,20,24 48:6,11 49:20,21 51:3,20 53:8,14,16,21,24 54:6 55:7 56:13,14 57:20,22,25 58:1,8,9,18,22,23 59:20,22 60:2,5,19 61:23 64:23,24 65:1,3,17,22,25 66:3,19,21,25 67:4,15 68:17</p> <p><b>amicus</b> [4] 1:22 2:7 25:9 38:6</p> <p><b>amount</b> [1] 27:4</p>	<p><b>ample</b> [1] 52:18</p> <p><b>analog</b> [3] 45:19,20,23</p> <p><b>analyses</b> [1] 50:13</p> <p><b>analysis</b> [6] 28:19 54:19 58:1 66:18 67:11,16</p> <p><b>analyzing</b> [1] 28:15</p> <p><b>ANAND</b> [97] 1:18 2:3,13 3:6,7,9 5:10,22 6:16 8:3,17 9:12 11:3,9,13 12:2,25 14:16 15:3,10 16:9,17 17:6,23 18:4,6,10,17,20 19:2,6,9,17,20 20:5,8,12,15,20,23 21:4 22:2,4,7 23:12 24:10,17 25:16 26:3,8 27:6,9,17,21 28:13 29:2,6,9,15,19,24 30:4,11,21 31:2,7,17,21,25 32:23 33:2,14,17,21,23 34:11,14,18,21 35:1,4,9,13,21 36:1,8,11,23 37:8 44:22 46:11,13 54:21 55:23 63:11 68:3,5</p> <p><b>announce</b> [1] 52:14</p> <p><b>another</b> [5] 13:1 21:8 34:25 42:2 60:1</p> <p><b>answer</b> [6] 33:18 56:12,13 60:13 68:6,8</p> <p><b>answers</b> [1] 57:18</p> <p><b>anticipated</b> [1] 37:18</p> <p><b>any-crime</b> [8] 24:1 48:25 49:2 52:6,24 58:15 69:4,7</p> <p><b>anyway</b> [1] 11:8</p> <p><b>appeal</b> [1] 4:13</p> <p><b>appear</b> [2] 7:24 50:14</p> <p><b>APPEARANCES</b> [1] 1:17</p> <p><b>appears</b> [1] 3:21</p> <p><b>Appendix</b> [1] 49:10</p> <p><b>applicability</b> [1] 53:19</p> <p><b>application</b> [1] 54:6</p> <p><b>applied</b> [2] 52:10,14</p> <p><b>applies</b> [2] 54:3 68:19</p> <p><b>apply</b> [6] 12:18 22:8 52:17 53:7,11 58:23</p> <p><b>applying</b> [5] 24:24 25:19 48:11 49:8,12</p> <p><b>appointed</b> [1] 24:14</p> <p><b>appreciate</b> [1] 41:7</p> <p><b>appropriate</b> [3] 19:20 45:23 52:21</p> <p><b>April</b> [1] 1:11</p> <p><b>area</b> [1] 51:4</p> <p><b>areas</b> [2] 42:12 53:18</p> <p><b>aren't</b> [1] 31:11</p> <p><b>argue</b> [2] 17:24 58:21</p> <p><b>argued</b> [2] 7:21 68:22</p> <p><b>arguing</b> [1] 24:19</p> <p><b>argument</b> [18] 1:14 2:2,5,9,12 3:4,7 11:2,4 25:7,14 28:18 38:5 46:20 61:6,16 68:3,23</p> <p><b>arguments</b> [7] 4:15 7:22 25:1,17 56:9 58:19 61:15</p> <p><b>arise</b> [1] 51:12</p> <p><b>arises</b> [1] 60:5</p> <p><b>around</b> [1] 33:6</p>	<p><b>arraign</b> [1] 32:8</p> <p><b>arrest</b> [37] 5:19,25 6:10,19,20 9:5 10:9 13:19 14:6 15:6 16:23 21:10,15,23 22:8,11 27:12 28:2 31:14 34:2 37:18 40:22 41:5 44:15 48:6 50:12,22 54:21 55:2 56:12,24 60:23 61:25 62:14 65:21,22 66:1</p> <p><b>arrested</b> [6] 7:23 9:1 29:8 47:8 57:4 64:7</p> <p><b>arresting</b> [1] 48:1</p> <p><b>articulate</b> [2] 27:6 50:8</p> <p><b>articulated</b> [1] 25:18</p> <p><b>articulates</b> [2] 6:1 49:11</p> <p><b>aside</b> [3] 33:21 35:22 48:12</p> <p><b>asks</b> [1] 65:18</p> <p><b>assault</b> [2] 11:19,25</p> <p><b>assessing</b> [1] 48:14</p> <p><b>assistance</b> [1] 42:13</p> <p><b>Assistant</b> [1] 1:20</p> <p><b>assume</b> [1] 12:11</p> <p><b>assuming</b> [2] 4:23 50:20</p> <p><b>attempted</b> [2] 16:13,14</p> <p><b>attorney</b> [1] 7:1</p> <p><b>attorney's</b> [1] 35:19</p> <p><b>Atwater</b> [1] 65:23</p> <p><b>authorize</b> [1] 7:2</p> <p><b>authorized</b> [2] 27:24 43:10</p> <p><b>authorizing</b> [1] 66:14</p> <p><b>automatically</b> [2] 49:4 52:8</p> <p><b>aware</b> [1] 55:12</p> <p><b>away</b> [1] 37:19</p> <hr/> <p><b>B</b></p> <p><b>back</b> [6] 14:11 24:2 32:1 37:13 51:22 63:20</p> <p><b>background</b> [1] 32:22</p> <p><b>bad</b> [3] 21:17 23:2 30:14</p> <p><b>bail</b> [6] 41:15,16 43:11,15,22 44:16</p> <p><b>Baker</b> [2] 48:3 60:20</p> <p><b>bar</b> [1] 14:18</p> <p><b>BARRETT</b> [20] 15:10 16:16,24 17:15 18:2,5,9 26:23 27:8,14,18 28:5 38:1 39:20 42:22 58:11,13 59:1,16 61:2</p> <p><b>base</b> [1] 43:6</p> <p><b>based</b> [7] 5:24 6:20,22 43:6 45:4 48:9 59:10</p> <p><b>baseless</b> [7] 23:7 38:20,25 46:6 57:8 64:9 66:14</p> <p><b>basic</b> [1] 21:7</p> <p><b>basically</b> [3] 10:8 24:2 64:3</p> <p><b>basis</b> [3] 8:11 23:6 64:3</p> <p><b>battle's</b> [1] 33:19</p> <p><b>bears</b> [1] 38:24</p> <p><b>becomes</b> [1] 60:10</p> <p><b>bedrock</b> [1] 3:24</p> <p><b>beginning</b> [1] 57:5</p> <p><b>behalf</b> [8] 1:18,24 2:4,11,</p>	<p>14 3:8 46:21 68:4</p> <p><b>behaved</b> [1] 57:4</p> <p><b>behavior</b> [2] 23:2 30:6</p> <p><b>belief</b> [1] 14:19</p> <p><b>below</b> [13] 4:12 7:21 17:23 24:24 25:22 26:17,21 39:13 44:6 48:17 49:7,10 68:23</p> <p><b>benefit</b> [1] 28:18</p> <p><b>best</b> [2] 9:21 13:15</p> <p><b>better</b> [1] 61:4</p> <p><b>between</b> [9] 8:7 17:1 22:11 43:12 44:9,14,16 55:11 64:16</p> <p><b>beyond</b> [7] 4:3,11 7:9 51:18 58:12 62:22 63:4</p> <p><b>big</b> [1] 29:5</p> <p><b>bit</b> [2] 36:22 60:6</p> <p><b>blank</b> [1] 16:4</p> <p><b>blow</b> [1] 11:24</p> <p><b>body</b> [1] 53:16</p> <p><b>bogus</b> [4] 16:23 26:13,14 28:4</p> <p><b>bonus</b> [1] 10:14</p> <p><b>both</b> [5] 3:23 22:9 24:7 30:2,6</p> <p><b>Brady</b> [1] 42:15</p> <p><b>brand-new</b> [2] 53:16 58:4</p> <p><b>bridge</b> [1] 57:15</p> <p><b>brief</b> [3] 6:24 25:8 42:25</p> <p><b>briefing</b> [6] 4:14 8:11 28:18 39:12 44:6,19</p> <p><b>briefs</b> [1] 25:9</p> <p><b>bring</b> [11] 8:24 21:10 34:3,8 36:6 37:10,18 38:18 45:2,12 62:18</p> <p><b>brings</b> [2] 20:6 46:24</p> <p><b>brought</b> [5] 21:14 35:6,10 57:22 58:7</p> <p><b>burden</b> [1] 38:24</p> <p><b>but-for</b> [1] 43:3</p> <p><b>buy</b> [2] 56:24 63:23</p> <hr/> <p><b>C</b></p> <p><b>calculation</b> [1] 29:12</p> <p><b>California</b> [2] 1:18 36:15</p> <p><b>called</b> [2] 9:8 45:22</p> <p><b>came</b> [3] 1:13 11:21 28:15</p> <p><b>cannot</b> [2] 17:10 47:6</p> <p><b>care</b> [5] 14:7 23:19 54:22 57:6,13</p> <p><b>career</b> [1] 63:19</p> <p><b>carrying</b> [1] 47:11</p> <p><b>Case</b> [37] 3:4,11 4:1,18 6:14,22,24,25 9:14 12:14,18,21 17:9,14 24:12 28:15 29:21 35:20 37:11 39:10 40:19,20 42:5 45:22 48:8 52:17 53:6,11 60:15 61:21 62:8 63:12,12 64:11 66:5 69:20,21</p> <p><b>cases</b> [12] 14:3 21:20 22:10,16 23:14 33:23 35:22 36:4 41:1 56:17 60:19 65:</p>
---	---	---	--	--

## Official - Subject to Final Review

<p>7  <b>categorical</b> [2] 13:24 24:  24  <b>causation</b> [20] 5:4,9,11 20:  14 28:11 32:15,20 53:1,4  54:4,24 55:4,19 57:12 58:  16 61:5 63:9,24 64:4 65:  15  <b>cause</b> [67] 3:12,17 4:23 10:  24 11:17 12:20 13:12 14:7,  15,18,22,24 15:9,18,20 16:  18 18:15 19:14,23 20:4,11  21:8,12,16,24 22:15 26:16,  18 30:23 40:9,17,24 41:4,  21 44:12,23 47:7,10,14 48:  8,13 49:4,15,19 50:1,14 51:  15,16 52:7 54:13,21,23 58:  5,25 59:10,13 60:25 61:7,  11,18 62:5,10 66:7 68:24  69:6,10,15  <b>caused</b> [14] 18:19,25 19:3,  17 26:9,24 27:1,10 38:25  46:5,6 55:17 58:17 64:9  <b>causing</b> [1] 11:22  <b>caution</b> [1] 60:1  <b>caved</b> [1] 7:5  <b>centuries</b> [1] 3:23  <b>Cert</b> [1] 49:10  <b>certain</b> [3] 41:24 47:24,25  <b>certainly</b> [9] 6:13 13:8 14:  21 31:2,12 34:4 51:17,18  53:5  <b>cetera</b> [1] 21:11  <b>change</b> [1] 58:4  <b>charge</b> [53] 3:16 4:23 9:6,7  11:1,17,18 12:10 13:7,12,  13,17,19,25 22:13 23:6,11  26:13,14,19 28:4 30:24 38:  19,20,25 40:23 41:3,17,18,  19,21 43:17,19 44:10,11  46:6 47:14 48:12 49:3 50:  21 51:14,16 55:17 59:6 62:  4 63:1,21,25 64:9,14 65:1  66:15 69:9  <b>charge-specific</b> [2] 3:14,  22  <b>charged</b> [3] 11:25 40:11  63:5  <b>charges</b> [29] 3:18 6:21 10:  20,23 11:16 16:13,23 21:  14,17 22:14,14,18 23:5 24:  4 40:15 48:14 49:19 50:2  55:9,24 59:13 61:8,17 64:  2,6 65:19 67:6 68:25 69:  14  <b>CHIAVERINI</b> [3] 1:3 3:4 4:  7  <b>CHIEF</b> [17] 3:3,9,22 5:3,21  6:11 28:21 32:5,12 37:24  38:8 46:15,22 48:19 67:19  68:2 69:18  <b>Circuit</b> [32] 5:20 6:1 11:6  13:3 15:11 20:19,25 21:6,  19 22:5 24:8 25:10 26:1</p>	<p>28:14 30:22 32:19 36:18  39:17,19 40:3,7,13 46:10  47:5 49:1,5,7 52:5,10,12,  13 68:13  <b>Circuit's</b> [8] 5:17 7:12,19 8:  6,7 11:10 14:1 32:20  <b>Circuits</b> [2] 36:25 37:1  <b>circumstance</b> [2] 14:17  41:20  <b>circumstances</b> [7] 42:5,  20 47:21,25 51:12 57:2,3  <b>citation</b> [1] 41:25  <b>cite</b> [1] 6:23  <b>CITY</b> [5] 1:6 3:5 29:4,5 65:  23  <b>civil</b> [1] 64:12  <b>claim</b> [48] 3:13,16,20 4:5,  20,22,25 8:23 17:5,11,18,  19,21 18:12 21:9,14 23:10  26:19 33:10 35:7 38:19 41:  10 42:13,15 45:3,13,14,17  46:5,25 49:14,22 53:15,24  55:1,2 57:20,22 58:3,7,18  60:5 61:25 64:12 67:12 68:  18 69:1,14  <b>claims</b> [3] 62:17 63:5 67:5  <b>clarify</b> [1] 26:23  <b>clause</b> [9] 17:12,13,16 33:  11 37:22 45:4,17 68:14,15  <b>clear</b> [6] 13:8 16:10 43:12  47:19 53:12 56:3  <b>clearly</b> [3] 48:15 59:14 60:  17  <b>client</b> [4] 8:25 11:22 29:22  35:8  <b>cognizable</b> [1] 45:17  <b>colloquy</b> [2] 54:20 59:2  <b>come</b> [5] 17:25 33:6 54:17  62:24 69:5  <b>comes</b> [1] 19:24  <b>coming</b> [1] 65:7  <b>committing</b> [3] 23:2,4 63:  14  <b>common</b> [13] 3:24 4:15 7:  12 8:9,13 13:10 22:9 32:  17,21 35:7 45:18,19 67:5  <b>common-law</b> [1] 55:13  <b>completely</b> [1] 60:22  <b>complexities</b> [1] 69:16  <b>complicated</b> [1] 44:18  <b>complicating</b> [1] 60:14  <b>concededly</b> [1] 5:7  <b>concerns</b> [1] 7:6  <b>concluded</b> [2] 47:5 48:4  <b>conduct</b> [4] 61:19 62:9,12,  16  <b>conflicts</b> [1] 25:21  <b>confused</b> [1] 14:23  <b>consideration</b> [1] 4:25  <b>consistent</b> [3] 8:8 18:22  68:12  <b>constitutes</b> [1] 37:20  <b>Constitution</b> [1] 60:12  <b>constitutional</b> [5] 4:17 43:</p>	<p>23 64:19,25 68:19  <b>constitutionally</b> [1] 6:18  <b>consult</b> [2] 29:25 32:2  <b>context</b> [11] 21:8,22 22:12,  23 33:5 40:7,14 54:17 55:  16 56:12 62:14  <b>continue</b> [3] 17:7 53:20 58:  21  <b>continuing</b> [2] 9:2 24:9  <b>contours</b> [2] 4:9 7:15  <b>conviction</b> [1] 60:11  <b>correct</b> [17] 5:12,17,18 6:  16 12:25 19:10 20:12,23  26:22 29:2 31:7,9 44:3 46:  9 48:11 63:2 64:23  <b>correctly</b> [1] 47:5  <b>corresponds</b> [1] 60:17  <b>corrupt</b> [1] 10:13  <b>corrupted</b> [1] 6:2  <b>corrupts</b> [1] 28:10  <b>couldn't</b> [1] 62:13  <b>counsel</b> [11] 28:22 29:25  32:2 38:3 42:13 46:16,18  67:1,20,25 69:19  <b>counsel's</b> [1] 42:14  <b>Count</b> [2] 35:7,11  <b>counterfactual</b> [4] 5:16,  18 10:5 26:11  <b>County</b> [6] 14:4 22:17 27:  23 29:9 33:24 37:14  <b>couple</b> [2] 22:19 36:11  <b>course</b> [4] 3:18 25:2 44:23  45:16  <b>COURT</b> [54] 1:1,14 3:10,25  4:2,10,21 6:25 7:2,13 12:8  13:2 17:9 18:1,2 19:21 24:  22,24 25:2,19 28:14,17 35:  12 36:5,7,9 38:9,14,17,22  39:8,11 40:17 42:14 44:6  45:11 46:23 47:3 48:4,16  49:9,11,24 50:7,11 53:12,  25 55:11 58:22 60:7,18 67:  17 69:2,11  <b>Court's</b> [9] 5:2 8:8 14:3 22:  9 23:13 33:23 35:22 39:14  49:25  <b>courts</b> [1] 4:13  <b>courts'</b> [1] 6:22  <b>Crawford</b> [1] 52:19  <b>crazy</b> [3] 29:21,21 30:6  <b>create</b> [1] 53:17  <b>created</b> [1] 48:24  <b>creating</b> [1] 58:2  <b>crime</b> [13] 15:16,19,19 18:  16 34:7 40:8,10,12 50:5  51:19 52:2 62:24 69:6  <b>crimes</b> [7] 5:6 6:13 23:5 47:  10 62:25 63:14 65:6  <b>criminal</b> [5] 23:4 42:12 63:  14,19 68:25  <b>cross</b> [1] 59:5  <b>crossed</b> [1] 57:15  <b>culpability</b> [1] 22:23  <b>curiae</b> [3] 1:22 2:8 38:6</p>	<p><b>curiosity</b> [1] 28:25  <b>curious</b> [1] 29:18</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> [4] 1:10,21,24 36:25  <b>damages</b> [1] 35:18  <b>dangerousness</b> [1] 13:21  <b>dating</b> [1] 37:13  <b>days</b> [20] 10:17 27:4,12,15,  16,17,18,19 28:7,25 31:15  43:6,8 47:9 59:4,7 61:1,10,  12 62:25  <b>days'</b> [1] 49:18  <b>dead</b> [1] 63:15  <b>deal</b> [1] 32:21  <b>decide</b> [1] 38:15  <b>decided</b> [1] 44:7  <b>decision</b> [10] 8:11 25:10,  22 26:2,17,21 41:5 48:17  49:10,25  <b>defend</b> [1] 40:10  <b>defendant</b> [1] 43:16  <b>defense</b> [1] 11:10  <b>defines</b> [1] 52:7  <b>defining</b> [1] 7:14  <b>definitely</b> [1] 67:9  <b>definition</b> [1] 55:21  <b>degree</b> [2] 9:16 47:10  <b>denied</b> [1] 43:21  <b>Department</b> [1] 1:21  <b>depend</b> [5] 42:4 56:15 66:  21,22 67:6  <b>depending</b> [1] 21:25  <b>depends</b> [1] 49:14  <b>depose</b> [1] 42:7  <b>deposing</b> [1] 42:18  <b>describing</b> [1] 68:21  <b>description</b> [1] 25:21  <b>detached</b> [6] 9:24 23:23  27:25 28:1 59:12 62:11  <b>detain</b> [5] 12:12 13:22 28:1  31:15 43:5  <b>detained</b> [8] 10:12,16 13:  18 15:17 47:8 48:9 65:9,  11  <b>detection</b> [1] 60:4  <b>detention</b> [36] 6:3,6 9:5 10:  16 27:4,20,24 41:22 42:1  43:10 44:16 47:7,16 48:6,  15 49:4,15,17,18 51:4,9,17  52:8 53:1 54:14 58:24 59:  14 60:9,10,16,18,25 62:6  63:4 66:5,14  <b>determination</b> [2] 41:15  62:11  <b>determine</b> [2] 21:2 39:9  <b>determined</b> [1] 59:11  <b>Devenpeck</b> [3] 47:18 56:  10,17  <b>deviate</b> [1] 58:9  <b>difference</b> [1] 55:10  <b>different</b> [15] 4:4 15:23 16:  15 21:14,21,25 25:20 45:  18 53:17 54:17,23 66:5 67:</p>	<p>9,12,17  <b>differently</b> [1] 27:7  <b>difficult</b> [3] 41:1,8 60:16  <b>directly</b> [1] 47:16  <b>disagree</b> [4] 50:18 51:2 52:  3,12  <b>disagreement</b> [3] 26:9 38:  13 44:24  <b>disagrees</b> [1] 37:13  <b>discretion</b> [2] 23:25 24:3  <b>discussing</b> [2] 20:17 57:  24  <b>dispute</b> [4] 3:21 4:19 16:12  25:24  <b>disputes</b> [1] 4:7  <b>disputing</b> [1] 24:7  <b>dissatisfactory</b> [1] 53:22  <b>distinct</b> [1] 43:1  <b>distinction</b> [6] 15:13 16:25  17:1 22:11 43:12 64:16  <b>distinguishing</b> [2] 44:9,14  <b>District</b> [2] 6:24 49:25  <b>disturbing</b> [1] 12:15  <b>Division</b> [1] 52:19  <b>docket</b> [1] 64:12  <b>doctoring</b> [1] 31:13  <b>dog</b> [1] 8:4  <b>doing</b> [5] 10:4,14 21:24 52:  18 57:8  <b>done</b> [9] 5:19 6:9,14 10:6,8  33:16 42:9,14,16  <b>double-count</b> [1] 20:1  <b>drive</b> [1] 54:19  <b>driving</b> [1] 62:1  <b>Due</b> [3] 33:11 34:13 37:22  <b>duration</b> [1] 23:22  <b>during</b> [2] 9:2 44:17  <b>dynamic</b> [1] 63:10</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>each</b> [1] 47:11  <b>earlier</b> [1] 26:1  <b>EASHA</b> [5] 1:18 2:3,13 3:7  68:3  <b>Eastern</b> [1] 6:23  <b>easy</b> [2] 24:21 35:16  <b>effects</b> [2] 17:21,24  <b>efforts</b> [1] 53:25  <b>either</b> [2] 9:4 44:25  <b>element</b> [20] 3:12 4:4,6,16,  19 7:16 8:22 13:1,2,4 20:6  24:20 26:10,15 28:11 32:  16 37:1 41:9 54:23,25  <b>elements</b> [7] 3:19 4:24 18:  14 19:11,14,19 58:4  <b>Eleventh</b> [19] 5:17,20,25 7:  12,19 8:5,7 11:6,9 14:1 15:  11 32:19,20 39:16,19 40:2,  6,13 68:13  <b>Elford</b> [1] 47:18  <b>embraces</b> [1] 64:18  <b>Employment</b> [1] 52:19  <b>enforcement</b> [2] 10:2 36:  14</p>
---	--	---	---	---

## Official - Subject to Final Review

<p><b>engage</b> [1] 44:2</p> <p><b>enough</b> [6] 8:1 43:17 46:10 61:9 62:8 68:25</p> <p><b>entire</b> [2] 9:24 69:1</p> <p><b>entirely</b> [1] 69:8</p> <p><b>entirety</b> [1] 59:14</p> <p><b>entitled</b> [1] 35:23</p> <p><b>envision</b> [1] 42:21</p> <p><b>erred</b> [1] 24:24</p> <p><b>error</b> [1] 42:15</p> <p><b>ESQ</b> [4] 2:3,6,10,13</p> <p><b>ESQUIRE</b> [2] 1:18,24</p> <p><b>essentially</b> [2] 24:13 25:11</p> <p><b>establishes</b> [1] 16:11</p> <p><b>ET</b> [3] 1:3,6 21:10</p> <p><b>Evanoff</b> [1] 14:12</p> <p><b>even</b> [17] 3:17 10:24 14:23 15:9 28:2 31:9 34:11 38:19 48:8 51:6 53:10 64:7 65:20,22 66:1 67:2 69:14</p> <p><b>Everhard</b> [1] 14:11</p> <p><b>everybody's</b> [1] 20:18</p> <p><b>Everyone</b> [4] 3:11 26:16, 21 38:12</p> <p><b>everything</b> [5] 5:1 23:18 28:11 35:19 56:2</p> <p><b>evidence</b> [9] 6:12 12:23 13:10 30:2 40:21 42:17 54:11 56:4 66:10</p> <p><b>eviscerates</b> [1] 63:9</p> <p><b>exact</b> [1] 10:19</p> <p><b>Exactly</b> [11] 20:15 22:2,4 23:12 26:12 28:13 38:12 42:25 59:9 61:5 66:18</p> <p><b>example</b> [6] 23:15 42:12 43:11 44:9 51:14 66:6</p> <p><b>except</b> [1] 28:3</p> <p><b>exception</b> [1] 50:5</p> <p><b>excessive</b> [1] 59:24</p> <p><b>exclude</b> [3] 29:11 54:8 61:14</p> <p><b>executed</b> [1] 45:5</p> <p><b>existed</b> [2] 26:18 61:8</p> <p><b>existing</b> [4] 47:17 53:8 58:23 65:17</p> <p><b>exists</b> [2] 25:5 68:24</p> <p><b>expect</b> [1] 4:16</p> <p><b>experienced</b> [1] 9:1</p> <p><b>explain</b> [2] 22:20 39:23</p> <p><b>explains</b> [2] 9:23 37:15</p> <p><b>explicitly</b> [1] 54:1</p> <p><b>explored</b> [1] 63:10</p> <p><b>extent</b> [1] 53:22</p> <p><b>extreme</b> [1] 23:14</p> <hr/> <p><b>F</b></p> <p><b>fabricated</b> [4] 41:19 43:19 44:10,11</p> <p><b>face</b> [3] 51:6,25 52:1</p> <p><b>fact</b> [7] 6:19 43:8,10 48:25 63:3 65:13 66:12</p> <p><b>factors</b> [1] 60:14</p> <p><b>facts</b> [7] 12:14 15:7 29:20 31:11,22 42:5 60:15</p>	<p><b>factually</b> [1] 31:24</p> <p><b>failed</b> [1] 26:19</p> <p><b>failing</b> [1] 62:20</p> <p><b>failure</b> [1] 41:10</p> <p><b>faith</b> [1] 12:19</p> <p><b>fall</b> [1] 60:12</p> <p><b>false</b> [12] 12:22,22 21:10 22:8 50:12,12 54:9,21 56:12 61:25 62:14 67:7</p> <p><b>far</b> [1] 38:13</p> <p><b>farther</b> [1] 17:16</p> <p><b>favorable</b> [1] 19:22</p> <p><b>federal</b> [5] 35:12,20 36:5, 18 43:22</p> <p><b>fees</b> [1] 35:19</p> <p><b>felonies</b> [2] 10:24,25</p> <p><b>felony</b> [11] 9:15 13:16 28:4 30:24 40:23 41:17,19,21 43:16,18 50:21</p> <p><b>few</b> [3] 10:12 41:12 49:18</p> <p><b>fight</b> [2] 8:5 69:15</p> <p><b>fighting</b> [3] 18:24 19:5 38:12</p> <p><b>figure</b> [3] 10:18 12:5 42:25</p> <p><b>filtering</b> [1] 13:4</p> <p><b>finding</b> [1] 31:14</p> <p><b>fine</b> [4] 10:12 59:23,24 68:7</p> <p><b>fine-only</b> [2] 51:13 65:23</p> <p><b>first</b> [10] 6:13 9:23 14:17 41:15 44:14 47:10 52:24 61:14 63:24 68:7</p> <p><b>first-line</b> [1] 33:17</p> <p><b>Florida</b> [1] 29:10</p> <p><b>flows</b> [2] 33:10 47:16</p> <p><b>focus</b> [3] 39:12 44:5 45:25</p> <p><b>focusing</b> [1] 57:1</p> <p><b>follow</b> [2] 9:11 25:2</p> <p><b>following</b> [2] 25:25 26:5</p> <p><b>forbid</b> [1] 65:2</p> <p><b>forecloses</b> [1] 66:19</p> <p><b>forget</b> [1] 30:16</p> <p><b>forgotten</b> [1] 26:1</p> <p><b>form</b> [1] 27:13</p> <p><b>formulation</b> [4] 5:12 19:10 39:16 68:13</p> <p><b>forward</b> [7] 56:9,10 64:1,2 65:15 66:11,13</p> <p><b>fought</b> [3] 39:21,22 40:1</p> <p><b>found</b> [3] 30:22 45:21 60:18</p> <p><b>founding</b> [1] 37:17</p> <p><b>Founding-era</b> [1] 8:13</p> <p><b>four</b> [18] 10:17 21:13,17 27:12,16,17,18,19 28:7,25 31:15 43:6,8 59:4,7 61:10,12 63:15</p> <p><b>Fourteenth</b> [4] 53:24 57:25 67:4,14</p> <p><b>Fourth</b> [72] 3:13,24 4:5,19 6:4 7:7 8:12,24 17:18 18:12 21:9 22:10 23:13,18,21 33:5,6,25 34:22,23 35:11 36:24 37:10 38:18 39:3 43:23 45:3,13 46:25 47:17,20,</p>	<p>24 48:5,11 49:20,21 51:3, 20 53:8,14,16,21 54:6 55:7 56:13,14 57:20,21 58:1,8,9, 17,22,23 59:20 60:2,4,19 61:22,23 64:23,23 65:1,3, 17,22,25 66:3,19,21,25 68:16</p> <p><b>Framers</b> [1] 37:17</p> <p><b>frankly</b> [1] 7:10</p> <p><b>Franks</b> [2] 22:17 54:8</p> <p><b>Friday</b> [2] 28:25 29:8</p> <p><b>front</b> [4] 28:8 34:3 36:7 37:9</p> <p><b>full</b> [2] 26:20 28:18</p> <p><b>function</b> [1] 37:22</p> <p><b>fundamental</b> [1] 24:12</p> <p><b>further</b> [7] 7:14 17:10 38:23 39:8 46:17 53:2 61:24</p> <p><b>fuss</b> [1] 11:22</p> <p><b>future</b> [1] 67:18</p> <hr/> <p><b>G</b></p> <p><b>gather</b> [1] 16:7</p> <p><b>General</b> [5] 1:20 7:1 12:16 50:19 53:3</p> <p><b>General's</b> [2] 8:21 25:12</p> <p><b>generality</b> [1] 36:13</p> <p><b>genuine</b> [1] 16:12</p> <p><b>Gerstein</b> [13] 10:11 14:4,6 15:6 22:16 23:15 27:23 33:24 34:1,6,14,19 37:13</p> <p><b>gets</b> [3] 52:2 63:25 64:2</p> <p><b>getting</b> [1] 31:18</p> <p><b>give</b> [9] 9:25 29:23 30:8,9, 16,17,18,19 32:1</p> <p><b>given</b> [1] 7:23</p> <p><b>gives</b> [1] 50:15</p> <p><b>giving</b> [2] 7:17 8:1</p> <p><b>goal</b> [1] 10:6</p> <p><b>Gorsuch</b> [31] 32:13,14,24 33:3,15,19,22 34:10,12,16, 20,23 35:2,5,10,14,24 36:2, 10,21 37:4,23 53:23 61:3, 20 62:15,23 63:6 67:1,24 69:5</p> <p><b>got</b> [11] 5:5 6:5 24:8 30:14 33:6 34:3 35:12,18 37:5 62:23 63:15</p> <p><b>gotten</b> [1] 51:1</p> <p><b>government</b> [2] 62:18,22</p> <p><b>governs</b> [1] 3:14</p> <p><b>gravamen</b> [2] 54:25 55:2</p> <p><b>great</b> [1] 32:21</p> <p><b>ground</b> [1] 40:11</p> <p><b>guess</b> [6] 20:17 24:8 54:15 55:4 61:20 64:10</p> <p><b>guilty</b> [1] 23:17</p> <p><b>gun</b> [1] 11:23</p> <hr/> <p><b>H</b></p> <p><b>hand</b> [1] 59:5</p> <p><b>handle</b> [1] 56:11</p> <p><b>happen</b> [5] 30:13,14,18 44:17 63:1</p>	<p><b>happened</b> [5] 32:25 42:20 48:19,24 56:2</p> <p><b>happens</b> [5] 29:3,7,14 44:16 58:18</p> <p><b>happy</b> [1] 22:19</p> <p><b>hard</b> [3] 9:17 54:18 55:19</p> <p><b>head</b> [1] 11:24</p> <p><b>hear</b> [1] 3:3</p> <p><b>heard</b> [2] 48:20 69:16</p> <p><b>hearing</b> [4] 10:11 14:6 15:7 23:16</p> <p><b>heightened</b> [2] 36:17 37:2</p> <p><b>held</b> [6] 27:12 28:7 47:3 49:7 59:21 65:8</p> <p><b>help</b> [3] 21:2 33:15 63:11</p> <p><b>high</b> [3] 36:12,16 59:23</p> <p><b>higher</b> [2] 41:16 43:15</p> <p><b>highlighted</b> [1] 64:16</p> <p><b>historical</b> [1] 28:19</p> <p><b>history</b> [1] 4:15</p> <p><b>hold</b> [7] 4:21 30:1,2,15 59:7 64:18 66:4</p> <p><b>holding</b> [5] 16:6,17 26:20 32:20 62:22</p> <p><b>holds</b> [1] 11:10</p> <p><b>home</b> [1] 57:24</p> <p><b>Honor</b> [17] 5:10 6:17 8:3 9:12 14:16 15:3 22:12 25:18 29:24 30:11,21 31:8,9,11 35:21 37:13 68:5</p> <p><b>Honor's</b> [1] 13:5</p> <p><b>Honors</b> [1] 69:16</p> <p><b>hoping</b> [1] 21:2</p> <p><b>hours</b> [9] 6:4,6 10:12 34:5 44:15 51:18 62:10,22 63:4</p> <p><b>however</b> [2] 42:4 52:11</p> <p><b>Howse</b> [1] 26:3</p> <p><b>hybrid</b> [1] 35:11</p> <hr/> <p><b>I</b></p> <p><b>idea</b> [3] 14:11 21:19 37:16</p> <p><b>identification</b> [1] 48:10</p> <p><b>idiosyncratic</b> [2] 32:15 35:2</p> <p><b>imagine</b> [2] 11:11 13:15</p> <p><b>immunity</b> [1] 14:20</p> <p><b>import</b> [1] 61:23</p> <p><b>important</b> [5] 19:8,9 38:22 39:1 50:16</p> <p><b>imposed</b> [1] 37:2</p> <p><b>impression</b> [1] 50:15</p> <p><b>imprisonment</b> [2] 47:12 50:12</p> <p><b>incident</b> [1] 29:22</p> <p><b>including</b> [1] 47:17</p> <p><b>incorrect</b> [3] 52:9 64:21 69:12</p> <p><b>indicates</b> [1] 13:21</p> <p><b>indication</b> [1] 14:14</p> <p><b>indications</b> [1] 7:11</p> <p><b>indictment</b> [2] 23:9 62:4</p> <p><b>individual</b> [2] 48:9 66:4</p> <p><b>ineffective</b> [1] 42:13</p> <p><b>infer</b> [1] 40:21</p>	<p><b>information</b> [1] 54:9</p> <p><b>initiating</b> [1] 22:25</p> <p><b>initiation</b> [3] 19:22 20:10 55:24</p> <p><b>innocent</b> [2] 48:9 60:22</p> <p><b>inquiry</b> [4] 42:11,21 43:4,7</p> <p><b>instance</b> [4] 6:23 13:11,16 17:12</p> <p><b>insulate</b> [1] 69:8</p> <p><b>insulates</b> [1] 52:8</p> <p><b>intent</b> [4] 48:1 56:15 57:1,7</p> <p><b>interests</b> [2] 10:2,3</p> <p><b>interpret</b> [1] 9:21</p> <p><b>interrupted</b> [1] 37:7</p> <p><b>involves</b> [1] 4:18</p> <p><b>irrelevant</b> [1] 29:17</p> <p><b>Isn't</b> [6] 25:14,14 45:20 55:14,15,15</p> <p><b>issuance</b> [2] 45:4 59:12</p> <p><b>issue</b> [7] 8:23 24:13 40:18 41:5 44:2 59:15 60:2</p> <p><b>issued</b> [3] 40:22 50:22,25</p> <p><b>issues</b> [3] 4:11 38:15 44:9</p> <p><b>issuing</b> [1] 43:15</p> <p><b>it'll</b> [1] 14:25</p> <p><b>itself</b> [1] 45:15</p> <hr/> <p><b>J</b></p> <p><b>JACKSON</b> [22] 20:5,9,13, 16,21,24 21:5 22:3,6,21 24:6,11 38:2 46:1 54:2,15 55:14 56:19 59:3 63:8 65:5 66:9</p> <p><b>Jackson's</b> [1] 38:11</p> <p><b>jail</b> [4] 8:1 9:3 65:14 66:16</p> <p><b>JASCHA</b> [1] 1:3</p> <p><b>jewelry</b> [2] 7:25 32:1</p> <p><b>joining</b> [1] 50:11</p> <p><b>Judge</b> [6] 3:23 14:23 15:5 41:16 42:19 57:11</p> <p><b>judges</b> [1] 32:9</p> <p><b>judicial</b> [1] 32:18</p> <p><b>jurisdictions</b> [1] 32:9</p> <p><b>jurisprudence</b> [1] 56:22</p> <p><b>jury</b> [2] 42:15,19</p> <p><b>Justice</b> [163] 1:21 3:3,9 5:3, 21 6:11 7:17 8:15,18 10:22 11:7,12,15 12:13 14:9, 25 15:10 16:16,24 17:15 18:2,5,9,13,18,24 19:4,8, 13,18 20:5,9,13,16,21,24 21:5 22:3,6,21 24:6,11 25:3,23 26:4,23 27:8,14,18 28:5,21,23,24 29:3,7,13,16,20 30:3,5,12 31:1,4,16,18,22 32:4,5,5,7,11,12,12,13,14, 24 33:3,15,19,22 34:10,12, 16,20,23 35:2,5,10,14,24 36:2,10,21 37:4,15,23,24, 24 38:1,2,8,10,11 39:15,20, 21,25 40:4,20 41:7 42:6,10, 22,24 43:25 44:4,20 45:7 46:1,3,11,15,17,22 48:19 49:23 50:4,18,24 51:8,21,</p>
--	--	---	--	--

## Official - Subject to Final Review

<p>22 52:1,23 53:23 54:2,15 55:14 56:19 58:11,13 59:1, 2,16 61:2,3,20 62:15,23 63: 6,8 65:5 66:9 67:1,19,21, 22,23,24 68:2,6 69:4,18 <b>justified</b> [4] 22:5 51:5 58: 25 60:25 <b>justifies</b> [2] 49:4 59:14 <b>justify</b> [5] 5:7 31:12 47:21 48:15 61:10</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>Kagan</b> [9] 32:12 43:25 44:4, 20 45:7 46:11 51:21 52:23 67:23 <b>Kagan's</b> [2] 46:3 68:6 <b>Katz</b> [1] 52:20 <b>Kavanaugh</b> [1] 37:25 <b>keep</b> [1] 36:8 <b>kidding</b> [1] 31:19 <b>kind</b> [21] 4:9 5:9,11 6:22 7: 15 10:6,18 13:21,24 16:4 21:9 24:25 28:18 42:11 43: 3 46:4 55:10 61:19 62:1 63:9 66:18 <b>kinds</b> [3] 4:14 56:9 57:23 <b>knock</b> [1] 52:24 <b>knocking</b> [1] 64:3 <b>knowing</b> [2] 15:7 28:3 <b>knowledge</b> [1] 31:8 <b>knows</b> [1] 63:19</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>lack</b> [6] 3:12 16:18 18:15 20:3 21:15 26:16 <b>lacked</b> [1] 48:13 <b>lacking</b> [4] 13:12 19:23 20: 10 47:14 <b>lacks</b> [2] 4:23 51:16 <b>Lago</b> [1] 65:24 <b>language</b> [11] 9:22 17:8 18: 20 19:5,5 25:22 49:24 51: 23,24,25 52:5 <b>largely</b> [1] 52:15 <b>last</b> [2] 24:22 46:3 <b>lasted</b> [1] 62:9 <b>latching</b> [1] 21:19 <b>later</b> [1] 50:14 <b>Laughter</b> [2] 32:10 48:21 <b>laundering</b> [6] 9:8,10 12:1 16:1 30:25 59:6 <b>law</b> [25] 3:24 4:15 6:23 7:12 8:9,13 10:1 13:10 22:9 32: 17,21 35:7,16 36:14 41:23 43:23 45:19,19 53:16 61: 19 66:2,23,25 67:5,10 <b>laws</b> [1] 61:11 <b>lawyer</b> [1] 36:6 <b>least</b> [7] 4:22 7:13,21 16:12 23:10 26:18 57:21 <b>leave</b> [5] 24:25 39:16,18 45: 9,10 <b>led</b> [1] 27:3 <b>left</b> [1] 24:12</p>	<p><b>legal</b> [11] 6:1,2,5,7 14:2,5 19:22 20:10 22:16 26:12 27:10 <b>legitimate</b> [1] 11:21 <b>length</b> [9] 5:23,24 9:5 27: 19,22,23 28:2 60:8,17 <b>letter</b> [2] 30:1,15 <b>level</b> [1] 36:12 <b>lie</b> [2] 14:15 24:3 <b>lied</b> [3] 12:9,11 14:12 <b>light</b> [3] 25:13 32:21 47:13 <b>limit</b> [1] 45:24 <b>limitation</b> [1] 62:17 <b>limited</b> [6] 12:21,23 60:16 62:4,19 63:4 <b>list</b> [1] 19:19 <b>litigation</b> [1] 67:13 <b>little</b> [4] 29:21,22 36:22 55: 5 <b>live</b> [1] 13:9 <b>local</b> [3] 65:20,21 66:22 <b>locate</b> [1] 53:24 <b>locating</b> [1] 57:20 <b>logic</b> [3] 8:20 9:11 61:22 <b>long</b> [3] 47:20 59:22 68:24 <b>longer</b> [4] 6:3,6 7:20 34:4 <b>look</b> [13] 6:1 10:8 14:1 30:7 51:4 52:11 54:7,11,15,22 59:3 62:5,8 <b>looked</b> [1] 29:4 <b>looking</b> [3] 55:18 57:2 62: 15 <b>lose</b> [2] 21:18 41:11 <b>lost</b> [1] 33:20 <b>lot</b> [4] 54:16 62:24 69:2,11 <b>lots</b> [1] 61:15 <b>Lovely</b> [1] 32:11 <b>low</b> [1] 14:18 <b>lower</b> [3] 25:19 36:19 50: 10</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>made</b> [4] 50:21 63:21 65: 12,13 <b>magistrate</b> [28] 6:18,20 7: 3,4,7 9:25 10:5,19 13:20 24:4 27:25 28:1,8 34:3,8 37:19 40:15,22 42:8,8 43: 9,14,21 44:11,13 59:12 62: 12 66:12 <b>main</b> [1] 38:13 <b>malice</b> [1] 37:2 <b>malicious</b> [54] 3:13,15 4:5, 20 5:13 17:11 18:12,21 19: 2 21:22 22:8,22 23:10 26: 19 32:17 33:4,10 35:6,15 36:14,18,20 37:10 38:18 45:3,14,20,22 46:25 47:2 49:12,14,21 50:13 53:14 54:10,25 55:13,15,16,21, 24 56:5,20 57:6,16 61:24 63:22 64:13,20 67:5 68:10 69:1,13 <b>maliciously</b> [2] 22:25 23:7</p>	<p><b>maliciousness</b> [1] 57:7 <b>man</b> [1] 49:2 <b>Manuel</b> [4] 37:12 45:13 53: 13 60:5 <b>manufacture</b> [1] 12:22 <b>manufactured</b> [1] 15:18 <b>manufacturing</b> [1] 40:10 <b>many</b> [5] 29:4 32:7 36:13, 16 40:25 <b>matter</b> [14] 1:13 15:14 16:7 22:13 23:17 27:1,2 32:25 33:25 34:16 37:21 43:22 61:1 66:10 <b>mattered</b> [1] 32:25 <b>matters</b> [2] 22:14 34:1 <b>McCollan</b> [1] 48:3 <b>McCollen</b> [1] 60:20 <b>mean</b> [17] 11:13,15 12:13 14:13 17:16,17 19:6 22:21 28:5 29:13 30:5 41:11 49: 2 52:1 54:20 56:21 59:17 <b>meaning</b> [1] 58:5 <b>means</b> [3] 24:21 48:12 65: 19 <b>meant</b> [2] 52:2,6 <b>MEGAN</b> [3] 1:24 2:10 46: 20 <b>mens</b> [7] 13:1 19:21 20:3 36:17,18,25 37:4 <b>Michigan</b> [1] 6:24 <b>might</b> [15] 21:9 26:6 35:17 36:6 41:13,19,23 43:11 44: 17 50:10 51:12 57:24 61: 15 62:2,18 <b>mind</b> [1] 22:14 <b>minor</b> [2] 41:24 66:7 <b>misconduct</b> [1] 69:8 <b>misdemeanor</b> [6] 13:19 27:3 41:18 47:10 65:19 66: 8 <b>misdemeanors</b> [7] 15:25 16:3 27:20 28:9 43:6 59:8 65:6 <b>misfit</b> [1] 55:10 <b>mistaken</b> [2] 48:10 62:2 <b>Mm-hmm</b> [6] 16:16 18:17 32:23 33:2 35:9,13 <b>moment</b> [1] 60:23 <b>Monday</b> [2] 1:11 28:25 <b>money</b> [6] 9:8,10 11:25 16: 1 30:24 59:5 <b>money-laundering</b> [4] 9: 7 11:1,18 31:5 <b>months</b> [2] 47:11 66:6 <b>Moore</b> [2] 66:2,20 <b>Moreover</b> [2] 48:3 49:24 <b>move</b> [1] 24:2 <b>Ms</b> [121] 3:6,9 5:10,22 6:16 8:3,17 9:12 11:3,9,13 12:2, 25 14:16 15:3,10 16:9,17 17:6,23 18:4,6,10,17,20 19: 2,6,9,17,20 20:5,8,12,15, 20,23 21:4 22:2,4,7 23:12 24:10,17 25:16 26:3,8 27:</p>	<p>6,9,17,21 28:13 29:2,6,9, 15,19,24 30:4,11,21 31:2,7, 17,21,25 32:23 33:2,14,17, 21,23 34:11,14,18,21 35:1, 4,9,13,21 36:1,8,11,23 37: 8 44:22 46:11,13,19,22 48: 22 50:3,6,23 51:2,11 52:4 53:5 54:5,21 55:7,23 56:8 57:17 58:11,12,13,20 59:9 60:3 61:13 62:7,20 63:2, 10 64:15 65:16 66:17 67:8 68:1,5 <b>much</b> [2] 8:4 26:6 <b>multiple</b> [2] 40:15 68:24 <b>municipality</b> [1] 15:2 <b>murder</b> [4] 11:16,17 16:14, 15 <b>must</b> [3] 27:24 47:1 68:10</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>name</b> [1] 26:1 <b>names</b> [1] 30:16 <b>NAPOLEON</b> [3] 1:6 3:5 29: 4 <b>narrow</b> [1] 4:19 <b>national</b> [1] 7:5 <b>naturally</b> [1] 33:10 <b>necessarily</b> [3] 28:10 62: 16 68:18 <b>necessary</b> [4] 6:3,7 8:24 10:15 <b>need</b> [4] 10:10,10 34:7 49: 16 <b>needed</b> [1] 12:12 <b>needs</b> [2] 3:25 40:18 <b>negate</b> [1] 68:25 <b>neutral</b> [7] 9:24,25 23:23 27:24,25 59:11 62:11 <b>never</b> [3] 7:22,25 45:5 <b>new</b> [2] 58:3 60:6 <b>Newell</b> [1] 13:10 <b>news</b> [1] 48:22 <b>next</b> [1] 3:4 <b>night</b> [1] 32:8 <b>non</b> [1] 62:6 <b>none</b> [1] 8:13 <b>note</b> [2] 50:16 68:21 <b>notes</b> [1] 22:12 <b>nothing</b> [1] 30:24 <b>nuanced</b> [2] 25:1 44:8 <b>nuances</b> [1] 26:11 <b>numerous</b> [1] 56:17</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>objective</b> [3] 37:1,4 57:3 <b>objectively</b> [6] 42:19 47: 21 48:15 51:5 59:4 65:18 <b>observed</b> [1] 16:3 <b>obviously</b> [1] 61:14 <b>offense</b> [5] 13:17 16:21 51: 13,13 65:23 <b>offenses</b> [4] 27:3 41:24,25 66:8 <b>Officer</b> [12] 14:11,21 15:1,8</p>	<p>22:13 40:10 48:2 56:16 57: 1,3,14 63:19 <b>officer's</b> [3] 9:14 23:25 24: 3 <b>officers</b> [7] 12:9,19 16:15 29:23 30:7 31:13 69:7 <b>OHIO</b> [1] 1:6 <b>Okay</b> [17] 16:24 18:9 20:13, 24 22:3 25:23 26:4 27:8, 18 32:4 33:16 34:7,24 37: 5,5 46:18 63:6 <b>old</b> [1] 36:5 <b>once</b> [1] 57:10 <b>one</b> [43] 3:16,21 4:7,19,22 7:22 11:16 15:13,21 16:12, 18,22 18:3,14,16 21:9,16 22:13,21 24:14 25:8,17,17 26:6,18 32:16 38:23 39:8 40:17,21 41:4 44:22,25 46: 7 49:3 50:1 63:16,16 64: 13 65:8,12 66:11 68:24 <b>one's</b> [1] 13:18 <b>only</b> [9] 10:11 16:17 21:16 28:8,14 41:24 51:14 66:6 68:17 <b>onward</b> [1] 60:23 <b>open</b> [3] 4:4 39:16,18 <b>opening</b> [1] 6:24 <b>operate</b> [1] 51:4 <b>operation</b> [1] 64:22 <b>opinion</b> [6] 24:21 38:14 50: 11,15 52:5,12 <b>opportunity</b> [2] 10:1 29:25 <b>opposed</b> [1] 41:5 <b>opposite</b> [1] 56:6 <b>option</b> [1] 13:15 <b>oral</b> [8] 1:14 2:2,5,9 3:7 38: 5 46:20 68:23 <b>order</b> [3] 40:18 58:17 66:15 <b>ordinary</b> [3] 54:6,16,16 <b>other</b> [33] 3:17,19 4:24 10: 23 15:19 16:5 18:11 19:11, 14 21:8 23:3 24:15,20 25: 7,15,16 27:11,13 33:12 37: 1 41:1 42:11 44:17 53:18 56:17 57:12 60:12,19 64:1, 6 65:5,7,9 <b>otherwise</b> [1] 62:13 <b>ought</b> [1] 38:14 <b>out</b> [33] 3:15,19 4:22,24 10: 18 11:23,23 12:5,6 17:5,18 18:10 22:15 28:24 31:13 33:15 35:20 40:16 41:12, 18 42:25 43:15 51:6 52:3 53:7 55:20 58:17 59:5 62: 25 64:3,19 68:11 69:13 <b>outright</b> [1] 43:22 <b>over</b> [4] 4:19 29:1,1 59:5 <b>overlay</b> [1] 65:17 <b>owners</b> [1] 11:21</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>p.m</b> [1] 69:21 <b>PAGE</b> [3] 2:2 20:18 25:21</p>
---	---	--	--	--

## Official - Subject to Final Review

<p><b>pages</b> <sup>[1]</sup> 49:10  <b>paid</b> <sup>[1]</sup> 30:10  <b>panel</b> <sup>[1]</sup> 49:7  <b>paragraph</b> <sup>[2]</sup> 49:11 50:7  <b>part</b> <sup>[4]</sup> 12:11 19:12,24 57:25  <b>particular</b> <sup>[6]</sup> 39:9 42:16 45:12 51:13 53:13 56:15  <b>particularly</b> <sup>[1]</sup> 43:12  <b>party</b> <sup>[1]</sup> 10:1  <b>pass</b> <sup>[1]</sup> 40:16  <b>passed</b> <sup>[1]</sup> 39:13  <b>past</b> <sup>[1]</sup> 60:7  <b>pay</b> <sup>[1]</sup> 43:16  <b>peer</b> <sup>[1]</sup> 10:18  <b>people</b> <sup>[6]</sup> 29:5,8 30:8 32:8 42:18 65:11  <b>per</b> <sup>[2]</sup> 64:19,24  <b>percolate</b> <sup>[1]</sup> 12:4  <b>percolated</b> <sup>[1]</sup> 4:12  <b>perfectly</b> <sup>[1]</sup> 68:12  <b>perhaps</b> <sup>[1]</sup> 64:7  <b>period</b> <sup>[1]</sup> 9:2  <b>perjury</b> <sup>[1]</sup> 12:21  <b>permitted</b> <sup>[1]</sup> 51:9  <b>person</b> <sup>[11]</sup> 7:24 12:12 17:19 22:24 23:3,8,9 34:3 60:21,21 63:13  <b>Petitioner</b> <sup>[8]</sup> 38:16 45:1 47:6,8 48:13,24 52:6 64:18  <b>Petitioner's</b> <sup>[3]</sup> 47:15 48:5 49:17  <b>Petitioners</b> <sup>[6]</sup> 1:4,19 2:4,14 3:8 68:4  <b>picture</b> <sup>[1]</sup> 55:20  <b>piggyback</b> <sup>[1]</sup> 46:2  <b>place</b> <sup>[2]</sup> 66:23,23  <b>plaintiff</b> <sup>[15]</sup> 3:15,19 4:21 5:22 38:24 41:2,8,11,13 42:2,7 46:24 47:1 63:10 69:13  <b>plaintiffs</b> <sup>[1]</sup> 47:3  <b>plaintiffs'</b> <sup>[1]</sup> 36:5  <b>play</b> <sup>[1]</sup> 12:6  <b>please</b> <sup>[3]</sup> 3:10 38:9 46:23  <b>plus</b> <sup>[2]</sup> 20:3 24:20  <b>point</b> <sup>[15]</sup> 3:23 9:19,24 14:2 26:24 41:12 49:9 50:7 51:6,17 56:21 59:18 60:9 61:11 66:19  <b>points</b> <sup>[1]</sup> 68:11  <b>police</b> <sup>[14]</sup> 9:14 12:9,19 15:7 23:24 24:2 29:23 30:7,19 31:13 40:9 48:8 63:19 69:7  <b>positing</b> <sup>[1]</sup> 61:16  <b>position</b> <sup>[11]</sup> 5:15,17 7:18 8:21 17:1 25:12 26:25 27:5 43:1 68:8,20  <b>positions</b> <sup>[1]</sup> 64:17  <b>possibility</b> <sup>[1]</sup> 54:1  <b>possible</b> <sup>[6]</sup> 28:6 34:4 38:18 41:20 45:2 53:23  <b>potentially</b> <sup>[1]</sup> 53:23</p>	<p><b>practice</b> <sup>[5]</sup> 8:13 12:6 65:20,21 66:22  <b>precedent</b> <sup>[6]</sup> 7:11 8:9 49:7 52:18 59:17 65:17  <b>precedents</b> <sup>[4]</sup> 47:17,23 51:3 53:9  <b>precise</b> <sup>[4]</sup> 4:9 7:15 36:24 56:21  <b>precisely</b> <sup>[2]</sup> 5:16 68:22  <b>predicated</b> <sup>[2]</sup> 17:11 68:18  <b>predicting</b> <sup>[1]</sup> 10:5  <b>preface</b> <sup>[1]</sup> 12:2  <b>preferred</b> <sup>[1]</sup> 68:12  <b>premise</b> <sup>[1]</sup> 24:25  <b>preparing</b> <sup>[1]</sup> 45:21  <b>presence</b> <sup>[3]</sup> 28:10 47:13 49:3  <b>presented</b> <sup>[10]</sup> 4:11 7:10 8:19 24:15 25:7 28:20 44:10,12 68:8 69:3  <b>Presumably</b> <sup>[1]</sup> 42:6  <b>presume</b> <sup>[1]</sup> 56:1  <b>pretrial</b> <sup>[4]</sup> 42:1 44:15,18 60:4  <b>pretty</b> <sup>[1]</sup> 35:16  <b>prevail</b> <sup>[2]</sup> 6:8 16:11  <b>principle</b> <sup>[1]</sup> 21:7  <b>principles</b> <sup>[7]</sup> 3:25 54:7,16,17 58:10,23 61:24  <b>prior</b> <sup>[1]</sup> 25:10  <b>privacy</b> <sup>[1]</sup> 10:2  <b>probable</b> <sup>[63]</sup> 3:12,17 4:23 10:24 11:17 12:20 13:12 14:7,15,17,22,24 15:9,18,20 16:18 18:15 19:23 20:4,10 21:8,12,16,24 22:15 26:16,18 30:23 40:9,16,24 41:4 44:12 47:7,9,14 48:7,13 49:3,15,19 50:1 51:15,16 52:7 54:13,21,23 58:5,25 59:10,13 60:24 61:7,11,18 62:5,10 66:6 68:24 69:6,10,15  <b>probably</b> <sup>[1]</sup> 69:9  <b>problem</b> <sup>[2]</sup> 33:3 59:24  <b>procedure</b> <sup>[2]</sup> 42:12 44:18  <b>procedures</b> <sup>[1]</sup> 44:17  <b>proceeded</b> <sup>[1]</sup> 56:4  <b>process</b> <sup>[31]</sup> 6:2,3,5,7 10:13 14:2,5 15:22 16:2,6 19:23 20:10 22:16,24,25 23:16,20 26:13 27:10,13 32:18 33:1,11,12 34:1,9,13,17 37:22 55:25 57:8  <b>procurement</b> <sup>[1]</sup> 45:22  <b>prohibits</b> <sup>[1]</sup> 55:8  <b>prong</b> <sup>[2]</sup> 64:4 65:15  <b>proof</b> <sup>[1]</sup> 50:20  <b>proper</b> <sup>[1]</sup> 13:4  <b>property</b> <sup>[2]</sup> 30:23 31:17  <b>proposes</b> <sup>[1]</sup> 58:14  <b>prosecuted</b> <sup>[1]</sup> 65:8  <b>prosecution</b> <sup>[51]</sup> 3:13,16 4:5,20 5:13 17:11 18:12,</p>	<p>21 19:3 21:22 22:8,22 23:11 26:19 32:17 33:4,10 35:6,15 36:14,19,20 37:11 38:19 45:3,14,20 46:25 47:2 49:13,14,22 50:13 53:15 54:10 55:1,13,16,22 56:5,20 57:6,16 61:25 63:22 64:13,20 67:5 68:10 69:1,13  <b>protect</b> <sup>[3]</sup> 14:21 15:1,1  <b>protecting</b> <sup>[1]</sup> 32:18  <b>prove</b> <sup>[7]</sup> 4:8 16:18,22 18:15 20:2 35:16 41:2  <b>proved</b> <sup>[1]</sup> 21:15  <b>provide</b> <sup>[2]</sup> 41:23 51:15  <b>provided</b> <sup>[1]</sup> 3:18  <b>proving</b> <sup>[3]</sup> 3:16 38:24 46:8  <b>provision</b> <sup>[1]</sup> 45:25  <b>provisions</b> <sup>[1]</sup> 60:12  <b>Pryor</b> <sup>[1]</sup> 3:23  <b>published</b> <sup>[1]</sup> 28:14  <b>pulled</b> <sup>[1]</sup> 11:23  <b>punishment</b> <sup>[2]</sup> 60:10,11  <b>punitive</b> <sup>[1]</sup> 35:18  <b>purchasing</b> <sup>[1]</sup> 31:8  <b>purely</b> <sup>[2]</sup> 36:3 37:1  <b>purposes</b> <sup>[2]</sup> 17:4 68:16  <b>pursuant</b> <sup>[3]</sup> 47:9 48:7 49:18  <b>pursued</b> <sup>[1]</sup> 15:21  <b>push</b> <sup>[1]</sup> 9:16  <b>put</b> <sup>[7]</sup> 3:23 33:9 46:13 56:9,10 59:5 66:15  <b>puts</b> <sup>[1]</sup> 66:11</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualified</b> <sup>[1]</sup> 14:20  <b>question</b> <sup>[24]</sup> 4:10,11 7:10 8:19 9:4 15:11 20:6 24:15 28:15,17 32:15 35:3 39:11 40:5 44:8 46:3 51:22 57:18 58:24 62:21 68:6,8,14 69:3  <b>questioning</b> <sup>[2]</sup> 35:25,25  <b>questions</b> <sup>[8]</sup> 4:4 5:2 38:11 39:14 44:21 48:18 60:6,8  <b>quibble</b> <sup>[1]</sup> 19:7  <b>quite</b> <sup>[2]</sup> 25:5 31:11  <b>quote</b> <sup>[1]</sup> 68:23</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>radical</b> <sup>[6]</sup> 24:23 25:3,6 26:6 48:20,23  <b>raised</b> <sup>[2]</sup> 44:8 68:15  <b>raises</b> <sup>[1]</sup> 44:8  <b>rationale</b> <sup>[4]</sup> 39:17,19 40:7,14  <b>rea</b> <sup>[7]</sup> 13:1 19:21 20:3 36:17,18,25 37:5  <b>reach</b> <sup>[4]</sup> 8:15 18:10 26:25 39:11  <b>reached</b> <sup>[1]</sup> 10:19  <b>reaffirming</b> <sup>[1]</sup> 39:5</p>	<p><b>realize</b> <sup>[1]</sup> 50:6  <b>really</b> <sup>[11]</sup> 22:23 23:1 26:6 31:5 35:17 54:18 56:25 57:11,13 59:25 60:2  <b>reason</b> <sup>[11]</sup> 9:20 12:3,7,9 13:6,14,22 30:22 58:9 60:1 64:4  <b>reasonability</b> <sup>[1]</sup> 53:20  <b>reasonable</b> <sup>[9]</sup> 14:19 23:22 37:16,20,21 39:10 43:5 59:6 60:18  <b>reasonableness</b> <sup>[6]</sup> 47:24 49:20 56:13,14,23 66:21  <b>reasons</b> <sup>[3]</sup> 22:19 36:12 57:9  <b>REBUTTAL</b> <sup>[4]</sup> 2:12 46:14 68:2,3  <b>recent</b> <sup>[1]</sup> 35:22  <b>recognition</b> <sup>[1]</sup> 60:3  <b>recognize</b> <sup>[1]</sup> 67:17  <b>recognized</b> <sup>[1]</sup> 53:14  <b>recognizing</b> <sup>[1]</sup> 53:15  <b>referenced</b> <sup>[1]</sup> 50:8  <b>reflected</b> <sup>[1]</sup> 23:13  <b>refused</b> <sup>[1]</sup> 32:1  <b>regard</b> <sup>[1]</sup> 6:14  <b>regardless</b> <sup>[1]</sup> 65:20  <b>reiterate</b> <sup>[2]</sup> 17:7 68:9  <b>related</b> <sup>[1]</sup> 21:7  <b>relates</b> <sup>[1]</sup> 56:23  <b>relevant</b> <sup>[1]</sup> 49:6  <b>relief</b> <sup>[1]</sup> 5:8  <b>remained</b> <sup>[1]</sup> 61:9  <b>remaining</b> <sup>[1]</sup> 48:14  <b>remains</b> <sup>[1]</sup> 54:12  <b>remand</b> <sup>[9]</sup> 4:8,25 25:1 26:25 58:18,20 61:4,15 69:17  <b>remember</b> <sup>[5]</sup> 7:1 14:3,18 16:14 29:9  <b>removed</b> <sup>[1]</sup> 35:12  <b>reply</b> <sup>[1]</sup> 39:23  <b>report</b> <sup>[1]</sup> 31:13  <b>reported</b> <sup>[1]</sup> 15:8  <b>request</b> <sup>[1]</sup> 46:13  <b>require</b> <sup>[2]</sup> 4:10 33:11  <b>required</b> <sup>[2]</sup> 22:18 45:15  <b>requirement</b> <sup>[4]</sup> 6:5 37:3 67:10,15  <b>requiring</b> <sup>[2]</sup> 9:24 57:18  <b>reserved</b> <sup>[1]</sup> 54:1  <b>resisting</b> <sup>[1]</sup> 13:19  <b>resolve</b> <sup>[4]</sup> 4:1 40:18 46:10 59:15  <b>resolved</b> <sup>[3]</sup> 19:21 24:13 60:8  <b>resolving</b> <sup>[1]</sup> 69:3  <b>respect</b> <sup>[5]</sup> 18:15 21:16 23:11 64:13 66:13  <b>Respondents</b> <sup>[9]</sup> 1:7,25 2:11 4:2 24:18 39:7 43:13,20 46:21  <b>Respondents'</b> <sup>[3]</sup> 25:8 43:2 68:20  <b>response</b> <sup>[1]</sup> 42:24</p>	<p><b>result</b> <sup>[9]</sup> 9:6,18 10:20 12:1,8 28:16 41:24 42:1 47:16  <b>resulted</b> <sup>[14]</sup> 4:6 5:14 7:15 9:22 17:8 18:21 19:7,11,24 26:10 41:4 47:2,15 68:10  <b>retained</b> <sup>[1]</sup> 7:20  <b>retaining</b> <sup>[1]</sup> 30:23  <b>return</b> <sup>[1]</sup> 30:4  <b>rights</b> <sup>[1]</sup> 63:16  <b>ring</b> <sup>[8]</sup> 11:21 29:23 30:8,15,16,17,18,20  <b>Riverside</b> <sup>[6]</sup> 14:4 22:17 27:23 29:10 33:24 37:14  <b>ROBERTS</b> <sup>[13]</sup> 3:3 5:3,21 6:11 28:21 32:5,12 37:24 46:15 48:19 67:19 68:2 69:18  <b>rule</b> <sup>[40]</sup> 3:14,22 7:13 8:6,6,8 10:7 11:5,10 12:16,18,23 13:7,8,9,25 14:1 15:11 22:5 24:1 25:20 26:22 48:12,25,25 49:2 52:6,15,16 53:7,11 58:2,15 63:9,24 64:23,24 69:4,7,12  <b>rules</b> <sup>[4]</sup> 12:4,5 18:23 22:7  <b>ruling</b> <sup>[1]</sup> 4:3  <b>run</b> <sup>[2]</sup> 26:12 28:12</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>same</b> <sup>[14]</sup> 10:20 11:2,4 12:1,7 20:18 21:19 22:7 25:2 27:3 55:1,6 56:8 64:4  <b>satisfies</b> <sup>[1]</sup> 49:20  <b>Saturday</b> <sup>[1]</sup> 32:8  <b>saying</b> <sup>[22]</sup> 8:16 18:6,25 20:1,17 28:9 35:22 37:15 38:16 43:20 46:2,4 51:24 53:3 55:23 56:6,25 59:3 60:22 64:5 69:3,12  <b>says</b> <sup>[22]</sup> 6:25 7:1,3 9:14 10:8 13:20 14:1 16:22 23:15,21 25:20 29:10,10 30:15 33:7 34:1 43:14 49:13,24 63:17 65:10,22  <b>Scalia</b> <sup>[1]</sup> 37:15  <b>scenario</b> <sup>[1]</sup> 56:20  <b>scope</b> <sup>[1]</sup> 7:10  <b>se</b> <sup>[2]</sup> 64:19,24  <b>search</b> <sup>[3]</sup> 17:12,15,25  <b>second</b> <sup>[1]</sup> 14:20  <b>secretly</b> <sup>[1]</sup> 25:19  <b>Section</b> <sup>[1]</sup> 46:24  <b>securing</b> <sup>[1]</sup> 31:14  <b>security</b> <sup>[1]</sup> 7:5  <b>See</b> <sup>[6]</sup> 34:10 42:11 43:3,4 45:7 62:5  <b>seeking</b> <sup>[1]</sup> 9:15  <b>seem</b> <sup>[2]</sup> 9:9 56:6  <b>seems</b> <sup>[7]</sup> 9:11 13:11 21:21 57:11 61:25 63:8,23  <b>seized</b> <sup>[3]</sup> 5:23,23 8:25  <b>seizing</b> <sup>[1]</sup> 31:17  <b>seizure</b> <sup>[54]</sup> 4:6 5:7,14 7:</p>
--	--	---	---	--

## Official - Subject to Final Review

<p>16 8:23 9:2,22 17:3,4,8,19, 21,24 18:19,22 19:1,3,11, 15,25 21:10 23:22 26:10, 10,24 27:2,11 37:16,20,21 38:25 39:2,9 43:18 44:7, 24 45:6,15,25 46:7 47:3,19 48:4 51:1,9 53:1 55:18 57: 19 58:17 62:9 65:2 67:11, 16 68:11</p> <p><b>seizure's</b> [1] 33:5  <b>seizures</b> [1] 55:8  <b>sense</b> [5] 6:17 22:1 32:21 40:7,14  <b>sentence</b> [1] 47:11  <b>separate</b> [6] 17:21 20:3,14 26:15 45:16,21  <b>series</b> [1] 4:3  <b>serious</b> [6] 10:25 13:7,13, 24 41:25 51:15  <b>serious/less</b> [2] 13:7,24  <b>server</b> [1] 22:24  <b>set</b> [2] 24:4 53:7  <b>sets</b> [1] 41:16  <b>setting</b> [3] 33:21 35:22 48: 12  <b>settled</b> [1] 66:24  <b>SG</b> [2] 18:8 58:14  <b>SG's</b> [3] 7:18 8:6 17:2  <b>Sheetz</b> [1] 24:22  <b>shorthand</b> [1] 50:14  <b>shot</b> [1] 35:18  <b>shouldn't</b> [7] 7:13 8:15 18: 7,10 45:10 51:24 64:11  <b>show</b> [15] 5:4,8,13 6:8 7:20 17:4 33:12 41:20 43:17 47: 1 53:4 58:16 65:6 67:11, 16  <b>showing</b> [9] 4:22 41:9,10, 14 42:3 47:6 52:25 61:5 67:6  <b>side</b> [8] 16:5 24:5,15 25:7, 15,16 45:9,10  <b>sides</b> [2] 24:7 30:6  <b>sign</b> [2] 6:20 7:2  <b>signed</b> [4] 6:18 7:3,6 23:24  <b>significant</b> [1] 39:4  <b>signs</b> [3] 15:5,5,6  <b>similar</b> [1] 42:21  <b>simply</b> [3] 4:21 38:17 43: 21  <b>since</b> [1] 41:9  <b>situates</b> [1] 34:21  <b>situation</b> [5] 5:5 13:16 14: 22 15:4,23  <b>six</b> [1] 47:11  <b>Sixth</b> [20] 20:18,25 21:6,19 22:5 24:7 25:10 26:1 30: 22 36:17,25 47:5 49:1,5,6 52:5,10,11,13 59:22  <b>slightly</b> [2] 27:7 67:3  <b>Smith</b> [1] 52:19  <b>so-called</b> [2] 9:6 10:25  <b>sold</b> [1] 7:24  <b>Solicitor</b> [5] 1:20 8:20 25:</p>	<p>11 50:19 53:3  <b>somehow</b> [1] 25:18  <b>someone</b> [4] 23:23 24:14 37:18 62:22  <b>someplace</b> [1] 33:6  <b>somewhat</b> [2] 29:18 50:10  <b>somewhere</b> [1] 22:15  <b>soon</b> [1] 34:4  <b>sorry</b> [2] 18:14 37:7  <b>sort</b> [8] 4:14 10:4 21:18 24: 19 28:19 37:2 55:25 61:5  <b>SOTOMAYOR</b> [23] 7:17 8: 15 18:13,18,24 19:4,8,13, 18 32:6,7 39:15,21,25 40:4 49:23 50:4,18,24 51:8,22 52:1 67:22  <b>speaking</b> [1] 36:12  <b>specify</b> [1] 22:18  <b>speedy</b> [1] 59:21  <b>split</b> [4] 13:3 36:22,24 46: 10  <b>squarely</b> [1] 59:18  <b>stage</b> [1] 67:13  <b>standard</b> [4] 49:12 50:9 52: 13 54:4  <b>standards</b> [4] 53:17 57:12, 12 67:8  <b>standpoint</b> [1] 55:4  <b>Stanford</b> [1] 1:18  <b>start</b> [1] 59:20  <b>starting</b> [1] 57:10  <b>state</b> [10] 35:16 36:7,8,19 41:23 47:23 58:22 66:2,22 67:10  <b>STATES</b> [13] 1:1,15,22 2:7 25:20 36:13,16 38:6 47:19 52:16,20,21 68:11  <b>States'</b> [2] 11:5 68:8  <b>statute</b> [3] 9:8 29:10 31:5  <b>step</b> [6] 9:11,11 38:23 39:1, 4,8  <b>still</b> [11] 5:8 7:6 21:18 23:8, 9,18 39:8 63:25 64:2,11 65:16  <b>stolen</b> [1] 30:23  <b>stop</b> [4] 26:20 38:20 46:4 59:19  <b>store</b> [2] 11:21,24  <b>straight-up</b> [1] 35:6  <b>strategically</b> [1] 36:3  <b>straw</b> [1] 49:2  <b>strawman</b> [1] 68:22  <b>strike</b> [1] 40:25  <b>struggle</b> [1] 33:8  <b>struggled</b> [1] 36:3  <b>stuff</b> [1] 63:21  <b>subject</b> [1] 61:17  <b>subjective</b> [2] 48:1 56:15  <b>submitted</b> [2] 69:20,22  <b>subsumed</b> [1] 8:19  <b>success</b> [1] 49:13  <b>suffice</b> [1] 61:12  <b>sufficient</b> [2] 43:8 61:8  <b>suggest</b> [3] 13:11 31:24</p>	<p>68:17  <b>suggested</b> [3] 31:23 45:24 52:2  <b>suggesting</b> [2] 31:11 45:2  <b>suggests</b> [1] 53:23  <b>summons</b> [4] 7:24 41:6,25 50:24  <b>supply</b> [1] 61:18  <b>support</b> [6] 6:13,17 7:12 11:17 61:12 62:6  <b>supported</b> [10] 3:17,22 47: 7,9 48:7 49:3,15,19 60:24 69:14  <b>supporting</b> [3] 1:22 2:8 38: 7  <b>supports</b> [3] 50:1 54:13 66: 7  <b>suppression</b> [1] 42:16  <b>SUPREME</b> [2] 1:1,14  <b>surely</b> [3] 7:3,4 27:10  <b>SURI</b> [17] 1:20 2:6 38:4,5,8 39:18,24 40:2,6 41:7 42: 10 43:9 44:3,5 45:1,11 46: 9  <b>sympathetic</b> [1] 67:3</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tacked</b> [1] 63:20  <b>tacking</b> [1] 69:9  <b>tainted</b> [7] 14:3,10 15:19 27:10 33:1,13 56:3  <b>taints</b> [1] 55:25  <b>tees</b> [1] 17:14  <b>termination</b> [1] 19:22  <b>terrible</b> [1] 30:17  <b>Terry</b> [1] 52:20  <b>test</b> [1] 9:13  <b>text</b> [2] 4:15 8:12  <b>theoretically</b> [1] 23:10  <b>theory</b> [5] 21:1,23,23,25 24: 20  <b>there's</b> [38] 11:16,20 12:9 13:3,9,13 14:5,7,13,14,15, 22,23 15:8 16:14 22:15 24: 13,23 25:23 26:5 30:6 36: 11,16,17 39:2,3 41:15 43: 23 44:24 45:21 50:9 52:18 55:10 58:8 61:10 62:24 66: 10 69:6  <b>thinking</b> [5] 15:4 55:3 57: 14 59:19,20  <b>thinks</b> [1] 14:23  <b>third</b> [4] 6:15 9:16 28:10 47: 14  <b>Thom</b> [1] 5:25  <b>Thompson</b> [21] 4:18 5:12 7:14 8:22 9:1 17:7 18:20 19:7,10 37:12 39:6 45:13, 15 47:4 53:13 55:12 57:17, 19 58:2,6 68:9  <b>though</b> [1] 48:8  <b>three</b> [11] 5:5,6 21:13,17 27: 4,15,15 47:8 50:1 63:15 65:9</p>	<p><b>three-day</b> [1] 48:4  <b>throw</b> [1] 11:18  <b>thrown</b> [1] 33:4  <b>today</b> [3] 20:7 38:12 61:16  <b>together</b> [2] 33:9 50:12  <b>took</b> [2] 45:7 46:11  <b>tort</b> [6] 4:17 35:16 36:19,20 45:21 68:19  <b>totally</b> [4] 9:18 10:13 56:24 68:7  <b>touch</b> [1] 68:13  <b>town</b> [1] 29:14  <b>train</b> [1] 62:1  <b>translate</b> [1] 54:19  <b>treating</b> [1] 55:5  <b>Treatise</b> [1] 13:11  <b>trial</b> [1] 59:21  <b>tricky</b> [1] 59:16  <b>trouble</b> [1] 15:4  <b>true</b> [2] 15:3 16:20  <b>try</b> [1] 10:18  <b>trying</b> [4] 20:25 24:8 42:24 61:23  <b>turns</b> [3] 40:16 41:18 43:15  <b>two</b> [20] 5:6 6:13,21 8:7 16: 3,13,15,22 25:17 27:20 28: 9 33:9 43:6 44:20 47:10 49:19 59:7,13 61:8,17  <b>two-day</b> [1] 29:11  <b>twofold</b> [1] 9:22  <b>type</b> [3] 45:12 57:21 58:3</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>Ultimately</b> [1] 42:4  <b>uncharged</b> [8] 16:21 40:8, 12 51:18 61:19 62:8,12,16  <b>under</b> [28] 3:13 8:5,6,22 9: 1,13 11:5,9 13:9 35:7 45:4, 17,18 46:25 49:1 51:19 54: 8 58:7 60:12,19 61:11,19, 21 65:15 66:1 67:9,10,14  <b>undermines</b> [1] 10:6  <b>understand</b> [21] 7:21 16: 25 20:25 24:9 28:6 31:4 33:20 35:15 36:4 37:12 39: 7 42:23 51:23 54:24 55:19 61:4 62:17,21 63:11 64:10 67:2  <b>understanding</b> [2] 15:12 55:12  <b>understood</b> [2] 25:13 38: 16  <b>unfair</b> [1] 40:4  <b>UNITED</b> [13] 1:1,15,22 2:7 11:5 25:20 38:6 47:18 52: 16,20,20 68:7,11  <b>unlawful</b> [7] 21:10,15,23 55:2,18 56:24 66:1  <b>unless</b> [2] 6:8 56:3  <b>unreasonable</b> [27] 17:12, 22,25 18:19,25 19:3,12,15, 24 20:2 27:19,22 38:25 39: 2 43:18 44:7 45:14 46:7 51:1,10,19 55:8,9,17 57:19</p>	<p>64:25 65:2  <b>unreasonableness</b> [1] 55: 3  <b>unsatisfactory</b> [2] 50:10 60:13  <b>up</b> [13] 7:17 8:2 17:14 29:4 36:4 47:11 54:17 62:24 63: 21 65:7,12,13 69:5  <b>urge</b> [2] 4:2 48:16</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vacatur</b> [3] 1:23 2:8 38:7  <b>valid</b> [5] 5:7 15:25 16:6 38: 19 60:24  <b>value</b> [2] 51:25 52:1  <b>values</b> [1] 68:16  <b>variety</b> [1] 44:8  <b>vary</b> [1] 66:23  <b>vel</b> [1] 62:6  <b>versus</b> [13] 3:4 47:18,18 48:3 52:19,20,20 56:10 60: 20 64:17 65:23 66:2,20  <b>video</b> [1] 11:20  <b>view</b> [3] 7:19 9:19 32:19  <b>viewed</b> [1] 47:21  <b>violate</b> [3] 47:20 48:5 66:3  <b>violating</b> [1] 59:22  <b>violation</b> [6] 7:7 23:19 39: 3 43:24 64:19,25  <b>Virginia</b> [2] 66:2,20  <b>Vista</b> [1] 65:24  <b>VIVEK</b> [3] 1:20 2:6 38:5</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waiver</b> [1] 24:20  <b>wanted</b> [4] 36:6 37:6,8 65: 14  <b>wanting</b> [1] 62:2  <b>wants</b> [2] 34:8 40:10  <b>warrant</b> [34] 6:19,20 9:15 10:10,13,15,17 13:14 15:6, 21,25 16:23 17:13 23:16 27:13 31:14 40:23 45:4,5, 17,23 47:9 48:7 49:18 50: 22 51:1,7 54:7 59:13 60: 23,24 61:18 68:14,15  <b>warrantless</b> [6] 5:19,24 6: 9 10:9 22:11 34:2  <b>warrants</b> [2] 7:2,4  <b>Washington</b> [3] 1:10,21, 24  <b>way</b> [17] 5:25,25 9:21 12:24 16:3 31:14 32:16 42:2 51: 3 52:6 53:4,6,6 56:7,11 57: 4 63:20  <b>ways</b> [1] 41:12  <b>week</b> [1] 24:22  <b>weekend</b> [1] 29:1  <b>weekends</b> [1] 29:11  <b>weigh</b> [5] 4:3 5:16 9:25 10: 1 28:17  <b>weighed</b> [2] 13:2 23:23  <b>weighing</b> [2] 4:9,16  <b>welcome</b> [3] 5:2 39:14 48:</p>
--	---	--	--	--

18  
**whatever** <sup>[2]</sup> 48:1 63:17  
**Whereupon** <sup>[1]</sup> 69:21  
**whether** <sup>[19]</sup> 9:4 16:12 21:  
 2,6,6 23:1,2 25:24,25 26:4,  
 12 46:14 48:14 49:15 51:5  
 54:12,13 57:2 58:24  
**white-collar** <sup>[1]</sup> 13:17  
**whole** <sup>[1]</sup> 54:20  
**wholly** <sup>[1]</sup> 34:12  
**Whren** <sup>[3]</sup> 47:18 56:16 66:  
 20  
**will** <sup>[4]</sup> 14:20 16:11 41:1 54:  
 11  
**Williams** <sup>[10]</sup> 9:23 10:7 12:  
 8 15:16 16:4,10,11,20,21  
 64:17  
**willing** <sup>[1]</sup> 53:10  
**win** <sup>[7]</sup> 8:5,6 9:13 11:4,8 12:  
 15 13:9  
**wind** <sup>[1]</sup> 36:4  
**wiretaps** <sup>[1]</sup> 7:2  
**within** <sup>[2]</sup> 8:19,24  
**without** <sup>[7]</sup> 6:14 10:17 28:  
 3 44:19 56:4 60:11 65:2  
**WOLD** <sup>[31]</sup> 1:24 2:10 46:19,  
 20,22 48:22 50:3,6,23 51:2,  
 11 52:4 53:5 54:5 55:7 56:  
 8 57:17 58:12,13,20 59:9  
 60:3 61:13 62:7,20 63:2  
 64:15 65:16 66:17 67:8 68:  
 1  
**wondering** <sup>[3]</sup> 21:5 31:19  
 61:21  
**words** <sup>[2]</sup> 23:3 27:11  
**work** <sup>[2]</sup> 21:25 65:4  
**worked** <sup>[1]</sup> 32:7  
**works** <sup>[1]</sup> 26:10  
**world** <sup>[3]</sup> 14:8 57:5,15  
**worried** <sup>[1]</sup> 55:5  
**write** <sup>[1]</sup> 24:22  


---

**Y**  


---

**Yep** <sup>[1]</sup> 20:20  


---

**Z**  


---

**zero** <sup>[1]</sup> 22:14